In the Supreme Court of the United States.

OCTOBER TERM, 1909.

STANDARD OIL COMPANY OF NEW JERSEY ET AL., APPELLANTS,

v.

UNITED STATES OF AMERICA, APPELLEE.

BRIEF FOR THE UNITED STATES.

VOLUME 2.

DETAILED STATEMENT OF FACTS.

Profits of the Business.
Prices of Crude Oil and its Products.
Pipe Lines as an Aid to Monopoly.
Contracts in Restraint of Trade.
Railroad Rebates and Discriminations.
Monopoly of Railroad Lubrication.
Unfair Methods of Competition.

CONTENTS.

VOLUME 2.

DETAILED STATEMENT OF FACTS.

Page.

I.—PROFITS OF BUSINESS AS INDICATING A MONOPOLY AND ITS EFFECTS:

TOTAL PROFITS OF THE STANDARD OIL TRUST AND THE STANDARD OIL COMPANY OF NEW JERSEY..... 4
Dividends..... 6
Total earnings..... 8
PROFITS OF THE INDIVIDUAL COMPANIES IN THE COMBINATION.. 15
Profits of the pipe-line companies..... 22
Profits of the exclusively domestic refining and marketing companies..... 27
Profits of the companies engaged in refining, domestic marketing, and export business..... 28
Profits of the lubricating oil and by-product companies.... 29
Profits of the foreign companies..... 30
EVIDENCE OF MONOPOLY AND ITS EFFECTS COVERS ENTIRE BUSINESS OF STANDARD OIL COMPANY, AND PARTICULARLY ITS ENTIRE DOMESTIC BUSINESS..... 30

II.—MONOPOLY AS SHOWN BY THE STANDARD'S CONTROL OF THE PRICES OF CRUDE OIL AND ITS PRODUCTS, AND BY THE EXCESSIVE PRICES OF SUCH PRODUCTS AND THE INCREASE THEREOF:

EXCESSIVE PROFITS PER GALLON..... 36
INCREASE IN PRICES OF THE PRINCIPAL PRODUCTS..... 38
INCREASE IN MARGINS BETWEEN CRUDE OIL AND REFINED PRODUCTS..... 47
INCREASE IN PROFIT PER GALLON..... 51
INCREASE IN PROFITS PER GALLON OF MARKETING COMPANIES.. 53
THE STANDARD OIL COMPANY FIXES THE PRICES OF CRUDE OIL AND ITS PRODUCTS THROUGHOUT THE UNITED STATES:
Prices of crude oil..... 54
The Standard's control of the prices of finished products.. 62
Variations in price according to the degree of competition.. 64

Page.

III.—THE STANDARD'S USE OF PIPE LINES AS A MEANS OF RESTRAINING AND MONOPOLIZING THE ENTIRE OIL INDUSTRY 67

TIDEWATER OIL COMPANY AND TIDEWATER PIPE COMPANY (LTD.) 68

BUYING UP OF THE CRESCENT PIPE LINE COMPANY 74

THE STANDARD'S ATTACKS UPON THE UNITED STATES PIPE LINE AND ITS ALLIED COMPANIES AND ITS ATTEMPTS TO CONTROL THEM 75

The Producers' Oil Company (Limited) 75

Producers' and Refiners' Oil Company (Limited) 77

United States Pipe Line Company 78

Efforts of the Standard to get control of the independent pipe lines 83

Further manipulation of prices in 1895 as an attack upon the independent interests 86

Renewed opposition to the extension of the United States Pipe Line to the seaboard 88

ACQUISITION OF OTHER COMPETING PIPE LINES 90

RESTRICTIVE CONTRACT BETWEEN THE NATIONAL TRANSIT COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY 92

REFUSAL OF THE STANDARD'S PIPE LINES TO ACT AS COMMON CARRIERS 95

Failure to act as common carriers prior to Hepburn Act 95

Evasion of the federal law by the transfer of the ownership of the pipe lines in New Jersey and Maryland and the construction of delivery stations at inaccessible points on the state lines 96

General segregation of pipe-line ownership at state lines 100

FAILURE TO COMPLY WITH THE LAW REQUIRING TARIFFS TO BE FILED, AND FILING TARIFFS UNDER WHICH INDEPENDENTS COULD NOT SHIP OIL 104

RESTRICTIONS ON THE SHIPMENT OF OIL UNDER THE TARIFFS FILED 105

IT IS ENTIRELY PRACTICABLE FOR PIPE LINES TO ACT AS COMMON CARRIERS 106

THE RATES FOR TRANSPORTATION CHARGED BY PIPE LINES ARE AND HAVE BEEN EXCESSIVE AND PROHIBITIVE FOR INDEPENDENT SHIPPERS AND RESULT IN ENORMOUS PROFITS TO PIPE-LINE COMPANIES 120

Charges of the trunk pipe lines 122

The Crosstown Pipe Line 136

Payments by certain pipe lines to P. S. Trainor 137

Excessive charges of the Standard's gathering pipe lines 144

IMPORTANCE OF THE STANDARD'S PIPE-LINE MONOPOLY 149

Page.

IV.—CONTRACTS BETWEEN THE STANDARD COMPANIES AND INDEPENDENT REFINERS AND PRODUCERS IN RESTRAINT OF TRADE 151

CONTRACT BETWEEN THE STANDARD AND SIXTEEN REFINERS IN WESTERN PENNSYLVANIA FOR CRUDE OIL AND THE SALE OF THEIR EXPORT PRODUCTS 151

CONTRACTS WITH THE PUENTE OIL COMPANY AND THE UNION OIL COMPANY, RESPECTIVELY 153

CONTRACTS WITH PRODUCERS OF CRUDE OIL IN CALIFORNIA, LIMITING THEIR RIGHT TO SELL TO OTHER COMPANIES 156

CONTRACTS WITH TIDEWATER OIL COMPANY, FLORENCE OIL & REFINING COMPANY, UNITED OIL COMPANY, AND OTHERS 156

V.—REBATES, SECRET RATES, AND RAILROAD DISCRIMINATION AS AN AID TO MONOPOLY:

EARLY REBATES AND DISCRIMINATIONS 159

South Improvement Company 159

General character and extent of early rebates 171

The Standard companies controlled the railway terminals for handling the oil of all shippers at New York Harbor 179

Railway pool agreement of 1874 184

The Standard Oil Company's purchase of the Empire Transportation Company, and contract with the Pennsylvania Railroad and other railroads for rebates, in 1877 187

Rebates to the American Transfer Company 189

Additional rebates in 1878 193

Suits against the United Pipe Lines, the Pennsylvania Railroad, and others, and indictments of Standard officials, for conspiracy, in Pennsylvania 194

RECENT RAILROAD DISCRIMINATIONS:

General character and extent 196

Secret, illegal, and discriminatory rates from Whiting into the South 200

Secret rates from Whiting to Evansville 202

Secret and discriminatory Grand Junction rate combination 212

Discrimination in open rates into the South:

Rates from Whiting compared with independent refining points 233

Rates from Parkersburg compared with Marietta 236

Secret and illegal East St. Louis rates:

General description 237

The 18-cent rate the legal tariff rate 240

Chicago & Alton's secret rate to East St. Louis 246

Chicago, Burlington & Quincy's illegal East St. Louis rate 263

Chicago & Eastern Illinois Railroad's illegal East St. Louis rate 266

Conclusion as to the East St. Louis rates 274

Page.

V.—REBATES, SECRET RATES, AND RAILROAD DISCRIMINATION AS AN AID TO MONOPOLY—Continued.

RECENT RAILROAD DISCRIMINATIONS—Continued.

Secret rates to Alexandria, La., and to other Louisiana points by way of Alexandria 276
Rate to Alexandria proper 277
Rates via Alexandria to other Louisiana points 280
Secret rates from Olean, N. Y., to points in New York and Vermont, and other secret rates in New York and Vermont. 285
Secret rates from Olean to Rochester, Genesee Junction, and Buffalo 286
Use of these secret state rates on interstate shipments from Olean to Vermont 292
Departure from the filed rate of 26½ cents from Olean to Norwood 297
Secrecy of the rate combination from Olean to Rochester, Norwood, and Vermont points 301
Other secret and discriminatory rates from Buffalo and Rochester to points in New York 308
Secret rates in Vermont on the Central Vermont Railroad 314
Unsuccessful efforts of independent refiners to obtain reasonable rates to northern New York, Vermont, and Canadian points 327
Defendants' comparison of rates on less than carloads from Olean and independent refining points to Vermont 339
Discrimination against independent refiners through failure of railroads to prorate on shipments to New England:
Description and effect of this policy 341
Resumption of prorating in 1906 343
Advantage to Standard from failure to prorate, and its connivance therein 345
Errors claimed by defendants to exist in the Government's statement of rates to New England 347
Discrimination as between Whiting and independent refining points in open rates to points in Central States 364
Miscellaneous discriminations:
Discriminations against independent refineries through failure of railroads to prorate on shipments to Pacific coast points 370
Failure to prorate on shipments to Mississippi River points above St. Louis 372
Discriminatory advance in rate from the Kansas oil field to Kansas City 373
Discrimination in arbitrary weights applied by railroads on crude oil and fuel oil 374
Secret rates and rebates in California 375

Page.

V.—REBATES, SECRET RATES, AND RAILROAD DISCRIMINATION AS AN AID TO MONOPOLY—Continued.
RECENT RAILROAD DISCRIMINATIONS—Continued.
The general withdrawal of secret rates and changes in published rates from 1905 to 1907, following the Government's investigations, are evidence of the previous discrimination..... 377
Discriminations in ocean rates on lubricating and other oils to South Africa..... 382
Many of the unfiled and unpublished rates which the testimony shows were used by the Standard Oil Company in the transportation of petroleum not only were discriminatory against its competitors, but were in clear violation of the law:
(1) The use on interstate shipments of the various unfiled and unpublished intrastate rates was in violation of the interstate commerce act..... 385
(2) In all cases we have shown evidence sufficient to bring notice to the Standard Oil Company, or to put it upon inquiry, as to the illegal character of the rates used..... 392
VI.—MONOPOLY OF THE TRADE WITH RAILROADS IN LUBRICATING OILS..... 395
EXCESSIVE PROFITS OF THE GALENA-SIGNAL OIL COMPANY..... 396
FORM OF CONTRACTS AND SETTLEMENTS..... 397
EXCESSIVE PRICES CHARGED TO MOST RAILROADS..... 399
ALLEGED ADVANTAGE OF GALENA OILS AND METHODS..... 418
BUSINESS DENIED TO INDEPENDENTS REGARDLESS OF PRICE OR QUALITY OF OIL..... 420
VII.—UNFAIR METHODS OF COMPETITION..... 427
LOCAL PRICE CUTTING..... 428
General statistics..... 428
Testimony of individual instances:
Albany and Troy, N. Y., and neighboring territory..... 443
Price cutting at Albany..... 443
Price cutting at Troy..... 447
Prices in towns supplied by Hisgen Brothers from Albany..... 450
Springfield, Mass., and vicinity..... 452
Price situation at Boston..... 460
Price situation at Philadelphia..... 461
Price situation at Baltimore..... 463
Price cutting against Red "C" Oil Company..... 467
Price cutting against Cooper Brothers, Winchester, Va.. 478
Price cutting at Augusta, Ga., and vicinity..... 478
Price cutting at Atlanta, Ga..... 482
Price cutting at Birmingham, Ala., and vicinity..... 485
Price cutting at points in Ohio..... 489
Threatened price cutting at Lincoln, Nebr..... 490
Price situation at St. Paul, Minneapolis, and Duluth.. 491

	Page.
VII.—UNFAIR METHODS OF COMPETITION—Continued.	
LOCAL PRICE CUTTING—Continued.	
Testimony of individual instances—Continued.	
Price cutting in Waters-Pierce territory and in Missouri and Kansas generally	494
Price situation at Denver, Colo	497
Price situation at Los Angeles, Cal	499
PAYMENT OF REBATES TO INDIVIDUAL CUSTOMERS	501
Cleveland territory	501
Youngstown, Ohio	502
Minerva, Ohio	503
Columbiana and Leetonia, Ohio	504
Massillon, Ohio	504
Navarre, Ohio	506
Other towns in Castle's territory	506
Chardon, Ohio	508
Points in Michigan	509
Decatur (Ill.) territory	510
Peoria (Ill.) territory	512
Gallatin, Tenn	516
Birmingham (Ala.) territory	517
Missouri and Kansas	518
OPERATION OF BOGUS INDEPENDENT CONCERNS	520
List of 63 such concerns operated by the Standard Oil Company	520
Charles E. Farrell, peddler:	
Oneonta, N. Y	523
Troy, N. Y	527
Concerns managed by L. Blaustein	528
Eureka Oil Company	529
Argand Refining Company	533
Southern Oil Company	535
Eagle Oil Works	538
William G. Davidson, Baltimore	541
Dixie Oil Works	542
Home Safety Oil Delivery, Baltimore, Washington, and Norfolk	550
Peoples Oil Company, Atlanta, Ga	553
Alabama Oil Company	555
Haynes peddling wagons, Columbus, Ohio	556
Home Safety Oil Company, Terre Haute, Ind	557
Hamilton Oil Company, Terre Haute, Ind	558
Kercher's concerns at Terre Haute, Ind., Decatur, Ill., and Springfield, Ill	559
Bogus concerns at Vincennes, Ind	569
Consumers Oil Company, Macon, Ga	571
Capital City Oil Company and Domestic Oil Company, Indianapolis	572

Page.

VII.—UNFAIR METHODS OF COMPETITION—Continued.
OPERATION OF BOGUS INDEPENDENT CONCERNS—Continued.
General reasons given by Collings for establishing the bogus peddling concerns 573
Bogus concerns operated in territory of Standard Oil Company of Ohio:
Peddling outfits run by C. M. Lines 578
Peddling concerns at Cleveland 580
Peddling outfit at Oberlin, Ohio 582
New American Oil Company 582
Toledo Oil Works 584
Republic Oil Company 585
REPORTS OF COMPETITORS' SHIPMENTS AND BUSINESS 589
Standard's "statistical department" 589
Reports of competitive shipments secured from railroad employees in the Baltimore territory, and use made thereof .. 592
Reports of competitive shipments obtained from railroad employees in other parts of the country:
Birmingham, Ala 597
Territory of Standard Oil Company of Ohio 598
Points in Indiana 600
Points in Illinois 600
Council Bluffs, Iowa, and Lincoln, Nebr 607
Waters-Pierce Oil Company territory 608
Kansas City and points in Kansas 609
Other unfair methods of obtaining information regarding competitors' shipments 615
Albany, N. Y 615
Birmingham, Ala 617
Peoria, Ill 617
Springfield and Decatur, Ill 618
Kansas City territory 619
Information obtained by the Standard from oil inspectors' offices regarding competitive business 620
DEFENDANTS' TESTIMONY ON PRICE CUTTING BY INDEPENDENT COMPANIES:
Alleged price cutting by Red "C" Oil Company 624
Price situation at Washington and vicinity 635
Alleged price cutting by other independent concerns in the Baltimore territory 639

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DETAILED STATEMENT OF FACTS.

In Volume 1 of this Brief the Government has presented all the facts which counsel deem necessary to sustain the judgment of the Circuit Court in this case, and the argument upon the law. The facts regarding the history and the general form of organization of the Standard combination have been set forth in that volume in sufficient detail. The facts with regard to the effects of the combination and its methods of business, and the means by which it has sought to maintain its monopoly have, however, been presented in Volume 1 only in an exceedingly condensed form; and the Government has thought it wise to prepare additional statements, more elaborately presenting the facts regarding these subjects and the evidence sustaining the same, which are presented in this volume.

I.

PROFITS OF BUSINESS AS INDICATING A MONOPOLY AND ITS EFFECTS.

TOTAL PROFITS OF THE STANDARD OIL TRUST AND THE STANDARD OIL COMPANY OF NEW JERSEY.

In order to properly appreciate the enormous earnings of the Standard Oil Trust and the Standard Oil Company, it is necessary to consider the actual investment of properties and money which the Standard Oil stock, now amounting to $98,338,382.26, represents. As we have heretofore stated, on January 1, 1882, the trustees issued $70,000,000 of trust certificates for the stocks of the 40 companies, the actual value of which was only $55,710,698.24. We now desire to call the court's attention to the evidence showing this actual value of stocks so put in the Trust. On cross-examination of Mr. Rockefeller, the Government produced the balance sheet of the trustees of December 31, 1882, showing the investments in the corporate stocks; the net earnings for the period 1883 to 1896, inclusive, and the balance-sheets of the twenty sub-companies from 1893 to 1896, inclusive. These were procured by the Government from James Corrigan. Defendant's counsel admitted the correctness thereof, and they were marked Petitioner's Exhibits 940, 941, and 942. (Vol. 16, pp. 3212 and 3213.) Exhibit 940, the balance sheet of 1882, contains, among other things, the following statement:

Difference between par value of certificates issued January 1, 1882	$70,000,000.00
And actual value of property acquired for same	55,710,698.24
	$14,289,301.76

This shows that there was $14,289,301.76 of certificates issued over and above the actual value of the property. Mr. Rockefeller admitted on cross-examination that the properties were appraised and taken in at $55,710,698.24. (Vol. 16, p. 3106.)

Mr. Archbold, on his cross-examination, said that he thought the value thus placed upon the stocks acquired by the trustees was the book value (vol. 17, pp. 3378–3381) and that the actual value was $70,000,000; but, according to their own evidence, these stocks were appraised and the books show the actual value to have been that above mentioned.

Subsequent to the original organization of the Standard Oil Trust the trustees issued additional trust certificates to the amount of $12,225,400, in exchange for property or cash, the other increase in the amount of trust certificates being by a stock dividend made out of the profits of the company. Adding this $12,225,400 to the $55,710,698.26 gives $67,936,-098.24 as the entire cost of the property held by the trustees, aside from property accumulated out of its profits.

Since the reorganization of the Standard Oil Company of New Jersey, when it took over the stocks formerly owned by the Trust, as hereinbefore stated, it has issued $1,088,382.26 of stock, in addition to the $97,250,000 originally issued for the companies formerly controlled by the trustees. We will assume, for the purposes of this argument, that this additional stock was paid for at par, either in cash or in property. Adding this to the investment made during the trust period makes an investment of $69,024,480.50 of property put into the trust and the Standard Oil Company, according to the valuations of the trustees and company themselves. This is all the money or property that has ever been put in by the stockholders (or trust-certificate holders). Whatever other property the Standard Oil Company owns to-day has come from earnings over and above the dividends paid.

We will now show the profits of the trust and of the Standard Oil Company (since its reorganization in 1899) from 1882 to the present time. We will first show the dividends and later the profits in excess thereof.

The earnings, dividends, assets, etc., for the years 1882 to 1899, during the trust period, were procured by the Government with great difficulty. Several witnesses were examined as to the books of the trust period and the liquidation period, and there was a noticeable amount of apparent dense ignorance on this subject, and an evident desire to cover up the transactions during this period was shown by all of the witnesses who were examined. Mr. Fay finally produced some

of the books covering this period; the rest we never succeeded in locating. From these accounts certain statements were made and their correctness verified by Mr. Fay.

DIVIDENDS.

The following table (based on Petitioner's Exhibits 10, 252, 259, and 399) shows the dividends of the Standard Oil Trust from 1882 to 1899, including the dividends paid during the liquidation period by the twenty subcompanies to those stockholders who had taken stock in exchange for trust certificates, and of the Standard Oil Company from 1899 to 1906.[a]

	Trust certificates or capital stock outstanding at end of year.	Dividends.	Rate of dividends.
			Per cent.
1882	$71,116,100.00	$3,695,253.00	5½
1883	71,730,700.00	4,268,086.50	6
1884	71,230,700.00	4,288,842.00	7½
1885	71,230,700.00	7,479,223.50	9½
1886	73,355,800.00	7,226,452.50	10
1887	90,187,160.00	8,463,327.50	10
1888	90,293,360.00	10,236,277.37	11½
1889	90,344,360.00	10,620,630.00	12
1890	96,941,860.00	11,200,089.00	12
1891	97,219,800.00	11,648,826.00	12
1892	97,250,000.00	11,874,225.00	12.21
1893	97,250,000.00	11,670,000.00	12
1894	97,250,000.00	11,670,000.00	12
1895	97,250,000.00	16,532,500.00	17
1896	97,250,000.00	30,147,500.00	31
1897	97,250,000.00	32,092,500.00	33
1898	97,250,000.00	29,175,000.00	30
1899	97,250,000.00	32,092,500.00	33
1900	97,448,743.96	46,691,474.50	48
1901	97,448,923.39	46,775,390.00	48
1902	97,448,923.39	43,851,966.00	45
1903	97,448,923.39	42,877,478.00	44
1904	98,338,382.26	35,188,266.00	36
1905	98,338,382.26	39,335,320.00	40
1906	98,338,382.26	39,335,320.00	40
Total	.....	548,436,446.87	

[a] Some explanation is needed of the method of determining the amount of dividends for the years 1892 to 1899 as stated in this table. The statement of the amount of dividends paid during this liquidation period in Petitioner's Exhibit 252 shows only the dividends paid by the Standard Oil trustees on the unliquidated trust certificates still outstanding, which

It thus appears that although about $69,000,000 was all that was ever invested in the Standard Oil Trust or the Standard Oil Company, either in property or money, except out of earnings, the dividends paid during the last ten years have run from 30 to 48 per cent, and for the ten years previous from 10 to 31 per cent. The total amount of dividends during the entire period from 1882 to 1906 was $548,436,446.87, or an average of 24 per cent per annum on the entire capital stock, and this would amount to 32 per

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were less than half of the amount outstanding previous to the dissolution of 1892. This exhibit, however, shows also the rate of dividend on the trust certificates, ranging from $12 to $33 per share per year. We have computed the total dividends paid by the Standard Oil trustees on the unliquidated certificates, plus the total dividends paid by the subcompanies to their individual stockholders who had taken stock in exchange for the liquidated trust certificates, by using this rate per share and applying it to the entire amount of $97,250,000, which was the amount of trust certificates prior to the dissolution. A consideration of the evidence already presented as to the manner of distributing these stocks, and as to the manner in which the dividends paid by the other subcompanies to the trustees on the unliquidated trust certificates were made to equal the amount of dividends to be paid on such certificates, will show the correctness of this method. The individuals who liquidated their trust certificates and took stock in the subcompanies continued to hold the same proportion of the stock of each of the subcompanies and received from those subcompanies dividends which, in the aggregate, gave the same rate of return as went to those parties who still retained their trust certificates and received their dividends directly from the trustees. (See Brief, vol. 1, pp. 68–70.)

Furthermore, Petitioner's Exhibit 399, which states the total dividends paid by the subcompanies during each year of this period, including the dividends paid to individual stockholders and to the Standard trustees in liquidation, shows that the amount of these dividends of the subcompanies during each year, with two exceptions, was practically equal to the amount which we have stated in the table, arrived at by the method of computation described.

The two exceptions are the years 1892 and 1899, in which the dividends paid by the subcompanies exceeded those paid by the Standard Oil Trust or Standard Oil Company of New Jersey, respectively. During part of 1892 all the stock of all the subcompanies was held by the trustees, and during part of 1899 it was all held by the Standard Oil Company of New Jersey; at that time there was not the same reason which existed from 1893 to 1898 for an identity between the dividends of the subcompanies and those of the trustees. The disparity in 1892 is also apparently due in part to an error in the reported dividends of the Buckeye Pipe Line Company, which appear to have been 38 per cent, or $19 per $50 share, instead of $38 per share, as stated in Petitioner's Exhibit 399.

cent per annum on the original value of the assets invested in this corporation.

But this does not tell the whole story, for, in addition to these dividends, the Standard Oil Company had at the end of 1906 a surplus of $261,061,811.05. (Petitioner's Exhibit 9.) This surplus is arrived at after charging off a very large depreciation on all of its properties.

TOTAL EARNINGS.

The following table shows the capitalization, net assets, and earnings of the Standard Oil Trust during the Trust period of 1882 to 1899, and the Standard Oil Company from 1899 to 1906. These earnings have greatly exceeded the dividends, especially during recent years. The earnings from 1882 to 1891 and from 1900 to 1906 were furnished by the defendants. (See Petitioner's Exhibits 10 and 259.) The earnings and assets during the period of liquidation from 1892 to 1896 are taken from Petitioner's Exhibit 941, which was furnished by Mr. Rockefeller as evidence in a previous suit, and it is admitted to be correct. The Standard Oil Company's officials did not produce the books covering this liquidation period, although inquiry was made in order to locate them. The profits from 1897 to 1899, inclusive, are computed by taking the dividends during this period already presented and adding thereto the increase in net assets from the end of 1896 to the end of 1899, so far as such increase was made out of earnings—that is, deducting the increase due to the issue of additional stock. The method of this computation is more fully described in the note attached to the table. There are no data by which to show the earnings of these three years separately, but the total earnings are by this method arrived at with substantial correctness, and in the table we have divided the total of three years by three and presented it as the average earnings of each year. The dividends were substantially equal during each of the three years, being 33 per cent on the outstanding trust certificates in 1897, 30 per cent in 1898, and 33 per cent in 1899; but it is probable that the profits were increasing from year to year.

Table of net earnings, Standard Oil Trust and Standard Oil Company, 1882 to 1906.

	Trust certificates or capital stock outstanding December 31.	Net value of assets end of year.	Mean of assets at beginning and end of year.	Earnings.	Percentage of net earnings to capital stock.	Percentage of net earnings to mean net assets.
1882	$71,116,100.00	[a]$55,710,698.24 65,321,832.40	$60,516,265.32	$12,388,507.16	17.4	20.5
1883	71,730,700.00	72,869,596.46	69,095,714.43	11,231,790.56	15.7	16.3
1884	71,230,700.00	75,858,960.19	74,364,278.33	7,778,205.73	10.9	10.5
1885	71,230,700.00	76,762,672.19	76,310,816.19	8,382,935.50	11.8	11.0
1886	73,355,800.00	87,012,107.37	81,887,389.78	15,350,787.68	20.9	18.7
1887	90,187,160.00	94,377,970.83	90,695,039.10	14,026,590.96	15.6	15.5
1888	90,293,360.00	97,005,621.27	95,691,796.05	12,757,727.81	14.1	13.3
1889	90,344,360.00	101,281,192.66	99,143,406.97	14,845,201.39	16.4	15.0
1890	96,941,860.00	115,810,074.50	108,545,633.58	19,131,470.84	19.7	17.6
1891	97,219,800.00	120,771,074.79	118,290,574.65	16,331,886.29	16.8	13.8
1892	97,250,000.00	128,102,428.18	124,436,751.49	19,174,878.30	19.7	15.4
1893	97,250,000.00	131,886,700.68	129,994,564.43	15,457,354.05	15.9	11.9
1894	97,250,000.00	135,755,449.44	133,821,075.06	15,544,325.54	16.0	11.6
1895	97,250,000.00	143,295,602.88	139,525,526.16	24,078,076.60	24.8	17.3
1896	97,250,000.00	147,220,399.90	145,258,001.39	34,077,519.10	35.0	23.5
Averages, 1897–1899	97,250,000.00	.....	171,720,208.67	47,443,635.07	48.8	27.6
Total earnings, 1897–1899	.....	.....	.....	142,330,905.21	.....	.....

1899		196,220,019.45				
1900	97,448,743.96	205,480,449.09	200,850,234.27	55,501,774.52	57.0	27.6
1901	97,448,923.39	210,997,006.13	208,238,727.61	52,291,767.61	53.7	25.1
1902	97,448,923.39	231,758,405.58	221,377,705.86	64,613,365.45	66.3	29.2
1903	97,448,923.39	270,217,921.85	250,988,163.72	81,336,994.27	83.5	32.4
1904	98,338,382.26	297,489,225.47	283,853,573.66	61,570,110.75	62.6	21.7
1905	98,338,382.26	315,613,261.55	306,551,243.51	57,459,356.08	58.4	18.7
1906	98,338,382.26	359,400,193.31	337,506,727.43	83,122,251.76	84.5	24.6
Averages, 1882–1891	82,365,054.00		87,454,091.44	13,222,510.39	16.1	15.1
Averages, 1892–1899	97,250,000.00		148,524,568.07	31,332,882.35	32.2	21.1
Averages, 1900–1906	97,830,094.42		258,480,910.87	65,127,945.78	66.6	25.2
Total earnings, 1882–1906				838,783,783.16		

* Net assets beginning of year.

NOTE.—Data compiled from following sources: Net value of assets, January 1 and December 31, 1882, petitioner's Exhibit 940; all other data, 1882 to 1891, petitioner's Exhibit 259); net value of assets and earnings, 1892 to 1896, petitioner's Exhibit 941 (capital during this period assumed as the amount of trust certificates outstanding March 18, 1892, Exhibit 259); data for 1900 to 1906 all from petitioner's Exhibit 10.

Net earnings for years 1897 to 1899 computed as follows:

Rate of dividend on trust certificates outstanding (Exhibit 252) was 33 per cent in 1897, 30 per cent in 1898, and 33 per cent in 1899. The dividends on the stock of subcompanies which had been distributed were, taken together, practically equivalent to the same total rate on the amount of trust certificates which had been exchanged for stocks, as is indicated by Exhibits 260 A and 260 B. Therefore the total dividends on the trust certificates outstanding, plus dividends paid by subcompanies to those who had received this stock, were practically equal to 33 per cent, 30 per cent, and 33 per cent on $97,250,000, the amount of trust certificates outstanding March 18, 1892. It is assumed that the rate of dividend on the stock of the Standard Oil Company of New Jersey, after the increase in 1899, was the same as was paid during the same time on the trust certificates. The stock of the Standard Oil Company of New Jersey at the end of 1899, $96,998,612.34 (Exhibit 2), plus the still outstanding trust certificates, $280,100 (Exhibit 259), was $97,278,712.34, but as the increased amount was not outstanding the entire year the dividends for 1899 have been computed on $97,250,000. To the dividends thus computed has been added the increase in the net assets out of earnings from the end of 1896 (Exhibit 941) to the end of 1899 (Exhibit 2). The result is as follows:

	Trust certificates or stock.	Rate of dividend.	Amount of dividend.	
		Per cent.		
1897	$97,250,000	33	$32,092,500.00	
1898	97,250,000	30	29,175,000.00	
1899	97,250,000	33	32,092,500.00	
Total dividends				$93,360,000.00
Add difference between net assets end of—				
1899			196,220,017.45	
1896			147,220,399.90	
			48,999,617.55	
Less increase in assets, due to increase in capital			28,712.34	
				48,970,905.21
Total net earnings, 1897–1899				142,330,905.21
Average per year				47,443,635.07

To ascertain the rate of earnings on net assets the average net assets employed have been assumed to be the mean between the assets at the end of 1899 and at the end of 1896:

Net assets end of—	
1896	$147,220,399.90
1899	196,220,017.45
Mean assets	171,720,208.67

From the foregoing table it will be seen that on an original investment of $69,024,480.50 the Standard Oil Company has earned $838,783,783.16 up to the end of 1906, which is a period of twenty-five years. Adding the profits for 1907 and 1908, of which we have no accurate statement, but assuming them to be as much as the profits for 1906, we have substantially a billion dollars earned by this company in twenty-seven years, with an original investment of $69,000,000. But the real significance of these earnings is seen when we take the last ten or twelve years after the monopoly had been well established. During the ten years ending with 1906, the earnings were $598,226,525.66, or practically an average of $60,000,000 a year, on an investment of $69,000,000, the capitalization being $97,250,000 part of the time and a little more the rest of the time.

It is further evident that this business is not attended with the risks incident to many other manufacturing enterprises and that its earnings are remarkably steady. To be sure there are some decreases, but on the whole the profits have shown a remarkable increase from year to year and enormous earnings in periods when most other manufacturing concerns were losing money. The Standard is selling a necessity of life, the consumption of which does not decrease appreciably in hard times, and the price of which does not have to be reduced like that of commodities of more variable demand.

We have in this table given the percentage of net earnings to capital stock, and it shows that the company is now earning in the neighborhood of 85 per cent, assuming its earnings for 1907 and 1908 to be equal to those of 1906, and we assume if there had been any great decrease the Standard Oil Company would have been eager to show it. But it may be said that this is not a fair comparison, that the earnings should be based upon net assets, and that the company is

greatly undercapitalized. If the court were regulating the earnings of a public-service corporation there would be some ground for the argument that the net assets should be the basis of calculating the percentage of earnings; but what we are trying to arrive at is whether the Standard Oil Company is substantially a monopoly and whether its prices are monopolistic or the prices incident to a competitive business. On this basis we must remember that the surplus of the company was made out of profits in excess of a very high rate of dividends, in recent years amounting to as much as 40 to 48 per cent. The Supreme Court of the United States lately held, in the Consolidated Gas case, that 6 per cent was a reasonable rate of earning for the Consolidated Gas Company. We doubt very much if there is more risk in the Standard Oil business than in the Consolidated Gas. The mere magnitude of the business, its wide-reaching character—having its markets over the entire world, and unaffected by local conditions, so that it can make up in one territory what it may lose by reason of some local competition in another—with its wide variety of products so that it can make up on one what it loses on another, gives it a stability of which there is no equal in the manufacturing business in this country. The business of railroads is often spoken of as a stable business and a safe investment, and on it a return of 6 per cent is ordinarily considered reasonable. This business is far more fluctuating and subject to the effect of business depressions than the business of the Standard Oil Company. But, considered on a basis of the relation of net earnings to net assets, the rate of earnings of the Standard Oil Company for the last ten years has on the average exceeded 25 per cent per year, and, except in one year, has in every year exceeded 20 per cent.

The dividends and earnings of the Standard Oil Trust and the Standard Oil Company would therefore indicate that the public was not reaping a great benefit in the way of cheap oil from this combination. Certain it is that these profits are enormous and no doubt far exceed what they would be but for the monopoly of the company. We will show when it comes to the discussion of the prices of oil that they have greatly advanced in recent years, and also that the Standard Oil Company sells oil in many parts of the country at exorbitant prices and makes enormous profits while in

other parts of the country, where it has competition, it sells at reasonably fair prices, and in some places it loses money in order to crush out its competitors; but it is evident from the preceding tables that on the average the Standard Oil Company makes excessive profits.

PROFITS OF THE INDIVIDUAL COMPANIES IN THE COMBINATION.

The total profits of the Standard Oil Company above given include both the domestic and the foreign business. In view of Mr. Archbold's testimony regarding the competition the Standard encounters abroad, we hardly believe the defendants will claim that their rate of profit on foreign business is anywhere near as great as the rate of profit on the domestic business. Although we can not make a complete separation of the two branches of the business, we have the earnings of the leading foreign companies, which show a much less rate of profit on the investment than the leading companies exclusively engaged in the American trade. The fair and reasonable inference from this is that the profits on the American trade are more excessive than the total earnings of the Standard Oil Company would indicate.

We now propose to give the capital and earnings of a large number of the subcompanies, including some of the foreign companies.

The tables on pages 17 to 21 show for the year 1906 the profits of the companies in the combination (except that some unimportant concerns for which no data were secured have been omitted) in comparison with the capital stock and the net assets, together with the rate of profit on the capital stock and the rate of profit on the net assets. The companies are classified according to the character of their business, so far as indicated in the evidence. These figures are all based upon exhibits furnished by the defendants, except that in the computations of the profits and net assets of the pipe-line companies in the pipe-line business only, which differ somewhat from the total profits and assets of the pipe-line companies, part of which are not connected with the pipe-line business, certain estimates have been made by the Government on the basis of the testimony of the Standard witnesses, as more fully explained later.

The profits of the natural-gas companies and crude-oil companies, as well as those of the Cumberland Pipe Line Company, have been compiled from the balance sheets and profit-and-loss accounts of the National Transit Company, which controls these companies, separate balance sheets and profit-and-loss accounts for these companies not having been furnished.

The profits and assets of the Standard Oil Company of New Jersey, as shown in this table, are those in its own business, exclusive of its holdings of stock in other companies and the dividends therefrom.

This table covers the great bulk of the business of the Standard combination.

Following this table of the profits of 1906 we have inserted another table, facing page 24, showing the rate of profit on capital stock and the rate of profit on net assets for the more important companies in the combination for each year 1899 to 1906. We have not considered it necessary to reproduce for all these years the figures showing in dollars the actual amount of assets and profits, as the relative importance of the companies sufficiently appears from the first table showing their capital stock, net assets, and profits for 1906 in dollars and cents. The rates of profit for the several years are compiled from the same sets of exhibits as the figures for 1906, and in the same manner. For a few of the companies figures for some of the years were not furnished by the Standard Oil Company, and the rate of profit can not be given, and in a few cases also the companies are new companies, which have been created since 1899.

Profits of the several companies in the Standard combination, 1906.

(Losses in red.)

	Capital stock.	Net assets (end of year)	Profits.	Rate of profit on—	
				Capital stock.	Net assets.
Exclusively domestic refining and marketing companies.					
Standard Oil Co. of—				*Per cent.*	*Per cent.*
Indiana	$1,000,000	$24,323,937.10	$10,516,082.75	1,051.6	43.2
Iowa	1,000,000	986,988.43	873,977.78	87.4	88.5
Kansas	1,000,000	1,096,467.88	974,644.49	97.5	88.9
Kentucky	1,000,000	4,223,884.61	1,307,780.61	130.8	31.0
Ohio	3,500,000	4,817,036.12	1,009,526.59	28.8	21.0
Nebraska	600,000	679,181.21	79,181.21	13.2	11.7
Continental Oil Co	300,000	1,301,515.82	575,043.98	191.7	44.2
Solar Refining Co	560,000	3,708,899.43	1,258,519.25	251.7	33.9
Waters-Pierce Oil Co. (1904)	400,000	(a)	[b] 2,400,000.00	[c] 600.0	.....
Companies engaged in refining, domestic marketing, and export business.					
Standard Oil Company of New York	15,000,000	26,062,610.30	9,566,031.15	63.8	36.7
Atlantic Refining Co	5,000,000	20,620,845.57	5,506,237.75	110.1	26.7
Standard Oil Company of New Jersey (own business)	.....	77,890,834.28	9,571,996.01		12.3

[a] Not reported. [b] Dividends. [c] Rate of dividends from Exhibit 7.

Profits of the several companies in the Standard combination, 1906—Continued.

(Losses in red.)

	Capital stock.	Net assets (end of year).	Profits.	Rate of profit on—	
				Capital stock.	Net assets.
Lubricating oil and by-product companies.					
				Per cent.	*Per cent.*
Galena-Signal Oil Co	$10,000,000	$4,685,568.30	$2,803,056.44	28.0	59.8
Vacuum Oil Co	2,500,000	7,643,377.17	1,449,575.15	58.0	19.0
Borne-Scrymser Co	200,000	285,198.81	37,458.44	18.7	13.1
Swan & Finch Co	100,000	601,495.44	150,080.29	150.1	25.0
Chesebrough Manufacturing Co	500,000	1,090,880.51	231,713.72	46.3	21.2
Empire Refining Co	100,000	99,968.40	5,032.39	5.0	5.0
Pennsylvania Lubricating Co	50,000	229,049.65	121,586.31	243.2	53.1
Private car lines.					
Union Tank Line Co	3,500,000	2,645,361.39	164,702.75	4.7	6.2
Pipe-line companies.					
Buckeye Pipe Line Co	10,000,000	12,204,542.87	7,028,568.40	70.3	57.6
Eureka Pipe Line Co	5,000,000	6,121,755.64	2,435,105.83	48.7	39.8
Indiana Pipe Line Co	1,000,000	4,365,743.42	2,513,553.69	251.4	57.6

New York Transit Co	5,000,000	7,222,114.94	2,343,282.59	46.9	32.4
Southern Pipe Line Co	10,000,000	11,020,160.08	4,649,306.26	46.5	42.2
Northern Pipe Line Co	4,000,000	4,005,513.04	1,591,614.22	39.8	39.7
Crescent Pipe Line Co	1,000,000	2,986,413.19	490,357.74	49.0	16.4
Southwest Pennsylvania Pipe Lines	3,500,000	4,336,384.41	373,383.67	10.7	8.6
Cumberland Pipe Line Co	1,000,000	1,416,298.38	242,107.27	24.2	17.1
Pipe-line companies (pipe-line business and assets only).					
Buckeye Pipe Line Co	.....	7,588,028.01	7,028,568.40	.....	92.6
Eureka Pipe Line Co	.....	5,459,076.82	2,414,755.91	.....	44.2
Indiana Pipe Line Co	.....	2,671,743.42	2,513,553.69	.....	94.1
New York Transit Co	.....	3,046,414.90	2,343,282.59	.....	76.9
Southern Pipe Line Co.[a]	.....	2,778,815.14	2,837,001.62	.....	102.1
Northern Pipe Line Co.[a]	.....	1,763,578.26	844,679.44	.....	47.9
Crescent Pipe Line Co	.....	1,014,413.19	229,821.12	.....	22.7
Southwest Pennsylvania Pipe Lines	.....	356,629.43	362,970.77	.....	101.8
Cumberland Pipe Line Co	.....	1,315,433.78	242,107.27	.....	18.4
Companies engaged both in pipe line and other business.					
National Transit Co	25,455,200	36,144,549.20	1,921,767.66	7.6	5.3
Pacific Coast Oil Co Standard Oil Company of California	17,000,000	21,329,952.30	2,793,569.25	16.4	13.1

(a Without taking into account restoration of depreciation.)

Profits of the several companies in the Standard combination, 1906—Continued.

(Losses in red.)

	Capital stock.	Net assets (end of year).	Profits.	Rate of profit on—	
				Capital stock.	Net assets.
Foreign companies.					
				Per cent.	*Per cent.*
Anglo-American Oil Co	$4,866,666.66	$11,389,673.76	$1,262,551.37	25.9	11.1
Deutsch-Amerikanische Petroleum Gesellschaft	7,140,000.00	9,645,063.00	1,313,852.82	18.4	13.6
Societa Italo-Amer. pel Petrolio	965,000.00	2,022,661.52	321,182.47	33.3	15.9
American Petroleum Co	3,179,250.00	4,836,674.13	1,353,443.17	42.6	27.9
Actien Gesellschaft Atlantic	273,700.00	460,228.17	120,096.55	43.9	26.1
Colonial Oil Co	250,000.00	3,051,482.67	1,256,724.38	502.7	41.2
Soc. Romano-Americana	2,412,500.00	2,475,640.60	63,140.60	2.6	2.6
Imperial Oil Co. (Canada)	4,000,000.00	5,875,054.33	1,082,363.70	27.1	18.4
Crude oil companies.					
Carter Oil Co	2,000,000.00	2,220,254.41	570,994.24	28.5	25.7
South Penn Oil Co	2,500,000.00	14,915,185.15	2,609,721.30	104.4	17.5
Ohio Oil Co	2,000,000.00	9,281,136.44	2,090,492.22	104.5	22.5
Washington Oil Co	100,000.00	136,084.95	75,149.67	75.1	55.2
Marion Oil Co	100,000.00	117,890.12	57,780.03	57.8	49.0

Natural-gas companies.					
Taylorstown Natural Gas Co	10,000.00	30,980.16	9,153.11	91.5	29.5
River Gas Co	190,000.00	269,449.81	83,877.78	44.1	31.1
Reserve Gas Co	2,225,000.00	1,607,669.90	84,895.09	3.8	5.3
Northwestern Ohio Natural Gas Co	2,775,250.00	599,955.16	263,605.59	9.5	43.9
Pittsburg Natural Gas Co	310,000.00	253,866.69	24,341.29	7.9	9.6
Mountain State Gas Co	500,000.00	526,251.85	165,177.86	33.0	31.4
Mahoning Gas Fuel Co	150,000.00	193,363.87	45,363.94	30.2	23.5
Lawrence Natural Gas Co	450,000.00	344,479.36	86,523.25	19.2	25.1
Connecting Gas Co	.....	884,751.86	45,880.86	.....	5.6
People's Natural Gas Co	1,000,000.00	4,301,700.62	86,202.95	8.6	2.0
New Domain Oil and Gas Co	.....	a 191,232.38	384,150.06	.....	.....
East Ohio Gas Co	6,000,000.00	6,380,493.30	170,843.76	2.8	2.5
Hope Natural Gas Co	2,500,000.00	2,611,574.38	1,427,694.45	285.5	54.7

a Assets less than liabilities.

PROFITS OF THE PIPE-LINE COMPANIES.

We desire briefly to call the court's attention to some of the profits shown on these tables. Take, for instance, the pipe-line companies. These profits are stated in two different forms, the first including the total profit in comparison with the capital and with the total net assets of each company, and the second covering the profits and net assets in the pipe-line business proper. From this table it will be seen that these pipe-line companies, the larger ones in particular, are earning enormous annual profits, even on their total net assets. For instance, the Buckeye Pipe Line Company earned in 1906 70.3 per cent on its capital stock and 57.6 upon the value of its net assets; the Indiana Pipe Line Company earned 251.4 per cent on its capital stock and 57.6 per cent on its net assets; and the smallest earning of any one of the pipe-line companies in 1906 was 10.7 per cent upon its capital stock and 8.6 per cent upon its net assets. Taking all the years, the profits of these companies usually range from 25 to 100 per cent on the capital stock. The apparent losses are, as shown by the second set of figures, not losses of the pipe-line business proper.

As explaining the second set of profit figures for the pipe-line companies which we have presented, it appears by the testimony of the Standard Oil officials in this case that nearly all of these pipe-line companies carry an enormous amount of assets in the form of cash or loans which are not used in the business of transportation and are not necessary to the business of the companies in any way. The evidence on this point is more fully presented in this brief in connection with the discussion of rates of transportation that are charged by the pipe-line companies. (See pp. 120 to 124.) We have in computing the rate of profit of these pipe-line companies in the second group of figures excluded the surplus cash and the loans which the officials admitted to be not necessary for the pipe-line business, and have also excluded the earnings from those assets.

In the second place the court will note, particularly in the case of the Southern Pipe Line Company, that the total profits as reported in the balance sheets, and shown in the first set of figures for that company in the above tables, are in a

number of years very low, and in two years there was an apparent loss. The same is true of the Crescent Pipe Line Company. These low profits and losses for these two companies are due to the transfer from the profits of these companies to P. S. Trainor of huge sums of money. This subject is fully discussed later. (See pp. 137 to 143.) It is admitted by the officials of these pipe-line companies that these payments to Trainor are not an expense of transportation or of operation of the pipe lines and that the true profits of the pipe-line business proper are ascertained by wholly omitting these items. The total payments of the Southern Pipe Line alone to the account of P. S. Trainor during the years 1899 to 1905 were more than $22,000,000, and the actual profits of the company on its pipe-line business were therefore more than $22,000,000 greater than appears from the final balance sheets. Excluding these Trainor payments, the Southern Pipe Line Company, instead of showing a low rate of profit, and in some years a loss, shows an extremely high rate of profit.

FOLD OUT IS TOO LARGE TO BE FILMED

.....	32.8	34.3	35.7	18.0	21.2	28.0
26.7	18.1	18.2	18.7	22.1	12.1	11.1
.....	.....	.....	.....	.2	10.5	13.6
.....	14.1	17.5	20.8	18.4	21.3	15.9
.....	12.6	9.8	16.9	14.2	17.8	18.4
31.8	43.7	47.5	32.3	31.3	31.4	57.6
65.9	54.0	56.8	52.1	51.5	46.9	39.8
167.0	75.9	152.2	153.5	72.5	112.9	57.6
26.9	35.8	35.5	46.4	45.6	49.6	32.4
14.1	23.6	14.8	18.6	6.2	22.9	42.2
7.2	11.5	9.7	7.6	14.2	19.3	39.7
28.0	26.4	9.3	20.9	7.4	.....	16.4
13.5	9.3	8.8	10.0	6.5	7.9	8.6
51.7	86.0	96.1	80.4	66.0	51.3	92.6
79.9	73.0	65.8	56.0	51.0	54.5	44.2
166.3	99.9	151.5	158.4	142.8	149.0	94.1
109.1	144.2	141.3	131.8	147.2	145.5	76.9
278.1	192.3	182.8	136.7	195.6	126.7	[b] 102.1
6.6	11.3	9.6	7.4	15.4	24.0	[b] 47.9
.....	.....	.....	95.9	84.1	89.4	22.7
71.5	99.7	127.3	2,045.8	(c)	(c)	101.8
11.0	13.3	10.7	13.7	10.6	3.1	5.3
1.8	6.9	1.1	4.5	19.4	10.9	13.1

[c] Assets in pipe line business less than liabilities.

It will be seen that making these necessary and proper changes in order to ascertain the true profits of the pipe-line companies on their pipe-line business, the rate of profit of these companies on the pipe-line business proper far exceeds the rate shown by taking the total profits reported in the balance sheets and comparing them with the total assets, as in the first set of figures. For the year 1906 the profits of the pipe-line business proper for the several companies run from 22.7 per cent to 102.1 per cent, and for all but four of the companies exceed 75 per cent of the net assets. The profits of the Southern Pipe Line Company in the pipe-line business proper range between 1899 and 1906 from 102.1 to 278.1 per cent of the net assets, and those of the Indiana Pipe Line Company from 94.1 to 166.3 per cent. In the case of the Southwest Pennsylvania Pipe Lines during two years an exclusion of the surplus cash and loans leaves the net assets employed in the pipe-line business proper less than zero; that is to say, the liabilities exceeded the assets, and yet this company made a large profit.

It may possibly be contended by the defendants that, in the case not only of the Southwest Pennsylvania Pipe Lines but of several of the other pipe lines, the amount of depreciation which has been written off from the plant on the books of the Standard Oil Company is greater than the actual depreciation, and that the true net value of the assets employed in the pipe-line business is consequently greater than appears in the above table for 1906, or than has been used as the basis for computing the rate of profit in the table for the other years. We have no doubt that, in some cases, the amount of depreciation written off by the pipe lines in their accounts is greater than the actual depreciation, and that such pipe lines are worth to-day more than they are valued at in the Standard's books. It is another question, however, whether these companies are entitled to earn profits on a plant value which has been reimbursed to them out of their profits by means of depreciation allowances. Even, however, if the most liberal possible calculation of the net assets employed by these pipe-line companies in their pipe-line business were made, namely, if, instead of taking the plant at the value at which it now stands on the books after depreciation, it were taken at its original cost, the rate of profit would still be

altogether exorbitant. The balance sheets of the pipe-line companies show the original cost of the plants, as well as the depreciated value. We have computed what the rate of profit on the net assets employed in the pipe-line business of these several companies would be if the full original cost of the plant were included with the net assets. The results are as follows:

For the Southern Pipe Line Company the rate of profit as thus computed would be, for the years 1899 to 1906, respectively, 70.9, 125.4, 105.5, 102.9, 84.2, 100.7, 79.6, and 63.4 per cent.

For the Eureka Pipe Line Company, for the years 1899 to 1906, respectively, 81, 66.2, 60.8, 55.5, 47.9, 44, 46.9, and 37.8 per cent.

For the Crescent Pipe Line Company, for the years 1903 to 1906, respectively, 75.6, 62.6, 70.5, and 22.7 per cent.

For the Buckeye Pipe Line Company, for the years 1899 to 1906, respectively, 45.5, 26.3, 44.1, 47.9, 40.8, 34.9, 28.1, and 53.6 per cent.

For the New York Transit Company, for the years 1899 to 1906, respectively, 49.8, 52.1, 66.1, 66.6, 63.3, 69.8, 68.6, and 35.7 per cent.

For the Indiana Pipe Line Company, for the years 1899 to 1906, respectively, 70.1, 89.8, 55.5, 89.2, 97.8, 90.9, 96.8, and 58.4 per cent.

For the Southwest Pennsylvania Pipe Lines, for the years 1899 to 1906, respectively, 14.8, 18, 14.1, 13.6, 17, 10.8, 13.2, and 13.7 per cent.

For the Northern Pipe Line Company, for the years 1899 to 1906, respectively, 14.5, 3.8, 6.6, 5.6, 4.4, 9, 14.4, and 33.6 per cent.

It thus appears that, with the exception of the Southwest Pennsylvania Pipe Lines and the Northern Pipe Line Company, both of which are relatively unimportant, the most liberal possible valuation of the assets employed in the pipe-line business of these pipe-line companies would still show a rate of return, in most cases and for most years, exceeding 40 per cent, and in many cases exceeding 60 per cent.

The National Transit Company, although it is an important pipe-line company, has enormous investments in other and much less profitable branches of business, as appears

from its balance sheets presented in evidence. In particular this company holds the stocks of a large number of natural-gas companies, including several of those shown in the table of profits for the year 1906; and as appears from that table the profits of the natural-gas companies are in the aggregate far below those of the pipe-line business, and some of them lose money. The National Transit Company also has large stock holdings in crude-oil producing companies which are likewise not as profitable as the pipe lines proper. We have been unable from the complicated accounts of the National Transit Company to ascertain exactly the profits from its pipe-line business proper and the net assets in that business; but undoubtedly the rate of profit on its pipe-line business very greatly exceeds the rate shown by taking its total profits from all business and comparing it with the total net assets, as is done in the above table.

PROFITS OF THE EXCLUSIVELY DOMESTIC REFINING AND MARKETING COMPANIES.

Referring now to the refining and marketing companies, it will be seen that those exclusively engaged in the American trade have enormous profits, with the exception of the Standard Oil Company of Nebraska, which has only lately been organized. These profits on the capital stock in 1906 in most cases exceed 87 per cent. In the case of the Standard Oil Company of Indiana the rate of profit on its capital stock of $1,000,000, which represents all of the money ever invested in the business except from its own net earnings, was 1,051 per cent in 1906. The Continental Oil Company (which is an important marketing company and sells its oil in a district where, as we have seen, there is practically no competition, viz, the Rocky Mountain States) earned in that year 191.7 per cent on the capital stock; the Solar Refining Company, 251.7 per cent; the Standard Oil Company of Kentucky (the marketing company throughout the Southern States south of the Ohio River, where there is little competition), 130.8 per cent. We have no statement of the net assets or of the total net profits of the Waters-Pierce Oil Company, but we have a statement of the dividends for certain years, as received by the Standard Oil Company of New Jersey. This shows a dividend of 600 per cent on the $400,000 of capital for the

year 1904. This company, as will be remembered, has the exclusive sale of the Standard Oil products in certain Southwestern States and the Republic of Mexico.

It may be claimed that many of these companies are undercapitalized. The capital stock, however, represents all of the capital ever put into any one of the companies, the balance of the assets having been made out of the earnings. But assuming that after paying the enormous dividends which have been paid from year to year, as we have seen, it is legitimate to claim a profit on the balance of the profits invested in the business, still the rate of income upon the net assets is exorbitant in the case of nearly every company of this group. It will be seen by reference to the second table for the companies we have mentioned, that these profits run in most instances from 20 to 88 per cent. The Standard Oil Company of Indiana, with a capital of $1,000,000, has over $24,000,000 net assets, and still it earned in 1906 43.2 per cent upon this amount.

PROFITS OF THE COMPANIES ENGAGED IN REFINING, DOMESTIC MARKETING, AND EXPORT BUSINESS.

Among these companies is the Standard Oil Company of New York, a very large company, which is engaged in several classes of business. It has several refineries, and is also the marketing company for New England and New York. It also is largely engaged in foreign trade and in loaning money. For the period covered by these figures it was also engaged in the business of purchasing crude oil and selling it to the various refineries of the Standard Oil Company. Its income on its capital stock for 1906 was 63.8 per cent, and upon its net assets 36.7 per cent. It appears that this company has large sums of money which it loans in Wall street upon stocks (railroad and others); on December 31, 1906, it had thus loaned $32,761,620.69. (Rockefeller, vol. 2, p. 869.) The company has also over $3,500,000 of government and state bonds. The balance sheets show the income from these loans and bonds to be small, and as they form a large part of the net assets, they necessarily reduce the rate of total income of the company, so that the rate of income upon the oil business is very much larger than shown.

The Atlantic Refining Company is also engaged partly in the foreign business, but, nevertheless, its rate of income upon its capital stock was 110.1 per cent in 1906 and upon its net assets 26.7 per cent.

Of course the refining and selling of oil is but a small part of the business of the Standard Oil Company of New Jersey, and in these tables we have excluded its stock holdings in other companies from its other assets and the income from stock from the earnings, but all the balance of the assets are covered by this table, including money loaned. A very large part of the assets in 1906 consisted of loans. Out of the total net assets of $77,890,834.28 employed in the direct business of the company in 1906, its loans and other bills and accounts receivable amounted to $56,487,323.04. The existence of the large loans in the assets of the Standard Oil Company of New Jersey has the same effect upon its rate of income as in the case of the Standard Oil Company of New York. In other words, its rate of income on its oil business is much higher than the rate on its total assets (aside from stock holdings) shown in the table, 12.3 per cent.

PROFITS OF THE LUBRICATING OIL AND BY-PRODUCT COMPANIES.

The important lubricating concerns are the Galena-Signal Oil Company and the Vacuum Oil Company. The Galena-Signal has a capital of $10,000,000, but the exhibits show that over $7,500,000 is watered stock (appearing as "good will" on the books); in fact, the Standard Oil Company of New Jersey, in reporting the assets in this case, excluded this water. It earned, however, on its ten millions of capital, 28 per cent in 1906; while on its net assets it earned 59.8 per cent (its net assets being largely current accounts with railroads which it supplies, in excess of the notes and accounts payable). We shall show later that on a fair valuation of its net investment its rate of profit is over 100 per cent (pp. 396–7, *post*). The Vacuum Oil Company in 1906 earned 58 per cent upon its capital and 19 per cent upon its net assets. This company does an enormous foreign business in lubricating oil and has a number of subcompanies abroad.

PROFITS OF THE FOREIGN COMPANIES.

Comparing the companies doing an exclusively foreign business with those doing exclusively American business, it will be seen that the foreign companies earn a much less rate upon net assets than the American companies, with one or two exceptions. The largest of these foreign companies is the Anglo-American Oil Company, having net assets in 1906 of $11,389,673.76, and a capital stock of $4,866,666.66. It earned in that year 25.9 per cent upon its capital stock and 11.1 per cent upon its net assets. This is a good income, but contrasted with the domestic companies it shows a much smaller rate. The Deutsch-Amerikanische, the German marketing company, which ranks next to the Anglo-American in magnitude, earned 13.6 per cent on its net assets in 1906.

The crude-oil companies and the gas companies in general show a rate of income very much smaller than the pipe-line, refining and marketing companies, some of them making a loss; taken together, however, they make at least a reasonable rate of profit.

The conclusion from this analysis of the profits of individual companies is clearly that the profits of the domestic pipe line, refining and marketing business of the Standard are much higher in rate than the profits of its foreign business or its crude-oil and natural-gas business. As these latter branches constitute a large part of the total business, it follows that the Standard is extorting from the American people for the oil it sells them a rate of profit decidedly higher even than the rate, itself excessive, it derives from its business taken as a whole, as shown in the tables on pages 20 and 24.

EVIDENCE OF MONOPOLY AND ITS EFFECTS COVERS ENTIRE BUSINESS OF STANDARD OIL COMPANY, AND PARTICULARLY ITS ENTIRE DOMESTIC BUSINESS.

In the circuit court the counsel for the defendants undertook to maintain the position that the evidence regarding the monopoly of the Standard Oil Company is principally confined to the domestic trade in refined or illuminating oil, and further, that the profits in the domestic trade in such oil are but a relatively insignificant part of the total profits of the

Standard Oil Company. As a matter of fact, the evidence of the Government regarding the monopoly and monopolistic methods of the Standard Oil Company relates to its entire business, and, moreover, even if it were confined to the domestic refined-oil business alone the proportion which the profit of that business bears to the total profits of the Standard Oil Company is far greater than is contended by defendants.

In the first place, the Government showed that the Standard Oil Company has practically a monopoly of the purchase of crude oil suitable for refining, its transportation through pipe lines, and its manufacture into finished products in the United States. Controlling thus a monopolistic proportion of the business of handling crude oil, it necessarily follows that the Standard Oil Company controls a monopolistic proportion of the business in all products of crude oil, or at least in all those of any importance. The unjust and monopolistic methods by which the Standard Oil Company has acquired control of practically all the pipe lines of the country is set forth more fully later herein, and this evidence bears on the monopoly of the entire business because it is largely through the control of the pipe lines that the monopoly of the entire business is maintained.

In the second place, the Government did not content itself with introducing evidence with regard to the monopoly of the transportation and refining of crude oil and regarding the monopoly of the marketing of refined illuminating oil. It is true that, in order to save burdening the record with an enormous mass of cumulative evidence, greater stress was laid upon the prices and the methods of marketing refined illuminating oil in the domestic trade than upon any other branch of that trade. It is conceded by the defendants that the illuminating-oil business is far the most important single branch, and we feel sure that the court would scarcely have pardoned us for introducing in as great detail evidence with regard to every branch as we have done with regard to this most important branch. Even were there no evidence with regard to the other products, the court could legitimately infer that those facts which hold true with regard to illuminating oil would hold true substantially with regard to others.

As a matter of fact, however, the Government did introduce sufficient evidence with respect to the business in naphtha and in lubricating oils, the two most inportant by-products of refining, to show conclusively that the same monopolistic conditions and methods prevail also with respect to these products.

Take the case of naphtha. The importance of this product may be seen from the fact (Petitioner's Exhibit 394) that in 1904 the Standard's domestic sales of refined oil were 9,822,922 barrels, and the sales of finished naphtha (not including gas naphtha), 3,936,689 barrels, or 40 per cent as much as those of refined oil. (Petitioner's Exhibit 387 A.) The Government introduced abundant evidence regarding this most important by-product. We showed (Petitioner's Exhibit 394) that the Standard Oil Company itself in 1904 manufactured 76.1 per cent of the total naphtha produced in the United States, and that, counting with the Standard the affiliated Tidewater, Corsicana, Security, and United companies, the proportion was 82.9 per cent. We showed that the Standard during the years 1897–1906 controlled from 84.5 per cent to 90.1 per cent of the sales of naphtha in the domestic trade (Petitioner's Exhibit 389). We also showed the excessive prices charged by the Standard for naphtha in this country taken as a whole and the excessive increase in those prices during recent years (Petitioner's Exhibit 629 and Defendants' Exhibit 293 C); and we compared the increase in the prices of naphtha with the increase in the average prices of commodities generally, showing it to have been far greater. (Compare Petitioner's Exhibits 985 and 986.) The Government also introduced evidence showing the excessive profit per gallon on naphtha secured by the domestic marketing companies of the Standard individually and combined for the entire country, and the extraordinary increase in that profit. (Petitioner's Exhibits 396, 396 A.)

Finally, the Government showed conclusively that the same unfair competitive methods which are pursued in the marketing of illuminating oil are pursued also in the marketing of naphtha. In fact, the defendants themselves stated that the physical methods employed in the marketing of naphtha, namely, primarily by means of tank wagons

delivering the product directly to the door of the retail dealer, are for the most part identically the same as the methods of marketing illuminating oil; and it follows almost without argument that the same methods of price making would be pursued. The fact that the Standard Oil Company pursues with respect to naphtha the policy of price discrimination, that is, charging a monopolistic price where there is little or no competition and cutting prices where there is active competition, is sufficiently demonstrated by comparing the profits per gallon of the several individual Standard marketing companies on naphtha with the proportion of the business in naphtha controlled by them in their respective territories. (Compare Petitioner's Exhibits 396 and 396 A, showing the profit, with Petitioner's Exhibit 389, showing the percentage of the sales controlled.) Here it appears, for example, that in the Philadelphia territory, comprising the eastern part of Pennsylvania, in the year 1901 the Standard Oil Company made a profit of only 0.64 cent per gallon on the marketing of naphtha, while in the territory of the Continental Oil Company, covering the Rocky Mountain States, it made a profit of 3.76 cents per gallon, the difference being evidently due to the fact that in the Philadelphia territory competitors did 15.3 per cent of the business whereas in the Denver territory there was no competition whatever reported. Throughout the figures covering a series of years similar marked discriminations in the profits per gallon appear as between different marketing territories, showing clearly that prices are kept high where there is little or no competition and low where there is active competition. It would have been exceedingly easy for the Government to introduce with respect to naphtha lengthy tables comparing the prices and profits in different towns throughout the country, similar to those which were introduced with respect to illuminating oil, but for the reasons already mentioned it seemed wholly unnecessary thus to burden the record.

All the evidence with regard to individual transactions of the Standard Oil Company at various places throughout the country in the marketing of its products relates quite as frequently and generally to naphtha as to illuminating oil.

The system of securing reports of competitive shipments, of operating bogus independent companies, of temporary local price cutting and the payment of rebates on prices to individual dealers are all repeatedly shown as applying to the marketing of naphtha as much as to the marketing of illuminating oil. Moreover, much of this evidence bears on the marketing of lubricating oil and other products of petroleum. Again, all the evidence relating to railroad discriminations, both by means of secret rates and in open rates, applies to all petroleum products. In fact, save only that detailed tables regarding prices in individual cities and towns were not introduced for the by-products of petroleum, the record is substantially as complete with respect to the monopoly and monopolistic methods of the Standard Oil Company in other branches of the business as it is in the illuminating-oil business.

We did not, of course, undertake to cover in any detail the Standard's foreign business, as it is with domestic business that this court is concerned. The domestic business as a whole, however, far exceeds the foreign business in quantity, and still more greatly in respect to the profits derived therefrom. The export trade in the products of petroleum is very nearly confined to illuminating oil. In the year 1904, according to the official reports of the Bureau of Statistics[a] of the Department of Commerce and Labor, the total export of petroleum products (not counting crude oil) was 910,939,800 gallons and the export of illuminating oil 761,358,155 gallons, or 83.58 per cent. Assuming that the exports of illuminating oil by the Standard Oil Company bear this same relation to its total exports, then since its exports of illuminating oil in 1904 were 661,504,800 gallons (Petitioner's Exhibit 377), its total exports would amount to 791,463,029 gallons. The total product of the Standard refineries in that year, as computed in defendant's brief in the circuit court, volume 3, page 525, was 2,207,629,694 gallons, so that the Standard exports in quantity would amount to only about 35.85 per cent of its refinery output. It has been shown above (p. 30) that the profits of the foreign marketing companies are lower than those of the domestic

[a] Monthly Summary of Commerce and Finance, December, 1904, p. 2192.

marketing companies. Hence, it is a clear inference that the profit properly attributable to the Standard's products sold abroad—even including all the profit of pipe-line transportation and refining on such product—represents much less than 35.85 per cent of the total profits of the Standard from its oil business. With respect to all the remaining oil business of the Standard, namely, the great domestic trade, the evidence of the Government is comprehensive, covering substantially all branches.

Even, moreover, were the evidence confined to the domestic trade in illuminating oil, the proportion of the Standard's profits derived from that branch of the trade is far greater than is calculated by the counsel for the defendants in the passage referred to. We believe it is unnecessary to burden the court with a detailed analysis of the reasons for this conclusion. Suffice it to say that the estimate made by counsel for the defendants, that in 1906 the profits on the domestic trade in illuminating oil did not exceed $13,923,687.54, or about one-sixth of the total profits of that year (defendants' brief in circuit court, vol. 3, p. 530) rests on two false assumptions: First, that the total profits on illuminating oil in both domestic and foreign trade do not exceed 50 per cent of the total profits from the petroleum business proper of the Standard; and second, that the profit per gallon on the domestic illuminating-oil business is not greater than that on the foreign business. Both of these assumptions are entirely without support in the evidence, and a detailed analysis of the profits would clearly show that they are both incorrect. Although illuminating oil constitutes only about 50 per cent of the Standard's product, we believe that the evidence shows that the profit per gallon on illuminating oil is higher than the average profit on all the other branches, so that the actual profit from the illuminating-oil business as a whole probably much exceeds 50 per cent of the total profits of the Standard's petroleum business. That the profits on the domestic trade in illuminating oil are much higher than on the foreign trade has already been emphasized by a comparison of the rate of earnings on investment for the leading domestic marketing and refining companies with the rate for the leading foreign companies (see p. 30, *ante*).

II.

THE STANDARD'S MONOPOLY AS SHOWN BY ITS CONTROL OF THE PRICES OF CRUDE OIL AND ITS PRODUCTS, AND BY THE EXCESSIVE PRICES OF SUCH PRODUCTS AND THE INCREASE THEREOF.

EXCESSIVE PROFITS PER GALLON.

Not only have we shown that the rate of profit of the Standard Oil Company and of nearly all of its subsidiary companies, particularly in the domestic trade, is excessive upon the capital stock and upon the net assets, but when we come to consider the prices at which the Standard sells oil and the profits per gallon on the products sold, the effect of the monopoly likewise appears. Mr. Bayne, an officer of the Security Oil Company, testified that a cent a gallon was a large profit on oil. (Vol. 2, p. 800.) Mr. Westgate, an independent refiner, testified that if he could make one-half cent per gallon on his entire output he would consider that he was doing extremely well. (Vol. 6, p. 2879.) Compare these profits with the average profits of the Standard Oil Company on its entire business, including the less profitable export sales, as well as the domestic. In 1903 the Standard Oil Company handled through its refineries and otherwise consumed 52,378,513 barrels—42 gallons each—of crude oil. (Defendants' Exhibit 267.) The profits of the company in that year were $81,336,994.27, or $1.55 per barrel, equal to 3.7 cents per gallon. This, to be sure, was a year of maximum profits, but for the years 1900 to 1906 (taken together) the average profit of the Standard companies per gallon of crude oil handled has been substantially 3 cents. While these profits include some derived from crude-oil production, a large amount from pipe-line operation, and some from sources outside of the oil business proper, the greater part of the profits are from the manufacturing and marketing business.

We have not the details showing the profit per gallon of all the different branches of the business upon all the different

products separately. We have, however, obtained from the records of the Standard Oil Company complete figures showing the profit of the marketing companies upon the marketing of refined oil, naphtha, lubricating oil, and all products combined. The marketing companies, or marketing departments of the several companies, are kept wholly distinct from the rest of the business. They buy the oil from the refineries at a price which gives a large profit to the refineries, and the profits of the marketing departments are over and above any profits made by the refineries or the pipe-line companies, or in the production of crude oil.

Petitioner's Exhibits 396 and 396A show that on the marketing business alone the average profits of the Standard (on all products handled by the marketing companies combined) in the United States between 1901 and 1906 ranged from 1.5 cents per gallon to 1.92 cents per gallon, being 1.64 cents per gallon in 1906. In other words, on the marketing end of the business alone the Standard Oil Company makes a profit three times as great as Mr. Westgate says is a liberal profit on the business of refining and marketing. We do not know what the profits of the Standard refining companies per gallon are, but from their enormous net earnings it is obvious that they are very high. We shall show later, in the discussion of the charges of the pipe-line companies for transportation, that these companies make also an excessively high profit per gallon of oil transported by them.

We also discuss more in detail (pp. 428–442, *post*) these figures of the profit per gallon of the marketing companies, showing particularly the wide differences in the profit in different parts of the country resulting from the Standard's practice of price discrimination, by which we mean the practice of charging much higher prices where there is little or no competition than in places where there is a considerable degree of competition. It is sufficient at this point to say that some of the companies of the Standard Oil Company make, on the marketing business alone, profits ranging as high as 4 and 5 cents per gallon. Thus, the Continental Oil Company, operating in the Rocky Mountain States, where there is practically no competition, during the years 1899 to 1906 made on the marketing of refined illuminating oil (the principal product) over its entire territory profits

ranging from about 3 to 4.98 cents per gallon, and in the Pacific coast States, taken as a whole, during some of these years, the Standard marketing company (the Standard Oil Company of Iowa) made profits of over 3 cents per gallon, these profits, as already stated, being over and above the profits of the refining and pipe-line transportation. (Petitioner's Exhibit 396, 396A, and 630, where the profits are stated per barrel of 50 gallons.) The profits in many individual towns in both these territories are much higher than the average for the entire area.

INCREASE IN PRICES OF THE PRINCIPAL PRODUCTS.

It has usually been claimed of large combinations in this country that they have increased business and decreased the cost to the consumer, and in this case, in a very general and guarded way, Mr. Archbold undertook to leave the impression in his direct testimony that this had been one of the objects and results of the Standard Oil Company. On cross-examination, however, he was asked directly if it was not a fact that over a period of ten, fifteen, or twenty years the Standard Oil Company had actually increased the prices to the retailer, and his answer was, that taking into consideration all that entered into it, he should say not, but that he did not know what the prices were in 1890, and did not know what the relative conditions were. (Vol. 17, p. 3464.) No other attempt was made in this case to show that the prices to the public had actually been reduced, and we believe the fact appears beyond reasonable question from the evidence that not only during the last ten or fifteen years have the prices been very greatly increased to the consumer, but that the costs of manufacture, transportation, and marketing have not materially increased, and in some instances have decreased; and that in consequence, not only have the profits upon the capital invested enormously increased, but the profits per gallon have likewise increased, showing the effect of this monopoly.

The Government undertook by the subpœna of many witnesses, officials, and employees of the Standard Oil Company to ascertain the prices charged to the public and the cost of manufacture, transportation, and sale back as many years as

possible. When the Government first demanded these figures, the defendants' statistician, Mr. Dredger, claimed they had no records back of 1898. When the defendants came to introduce their testimony, he did actually produce the figures back as far as 1895 and counsel attempted to give the impression that the Government had been unfair in selecting the year 1898 as a starting point. On cross-examination Mr. Dredger admitted that the Government had demanded the figures as far back as possible, and that he had been unable to procure them at that time, but had subsequently made up the figures from memoranda and data as far back as 1895. (Vol. 17, pp. 3550–3551.) The Government requested thereupon that the prices be similarly made up at least back to 1885 (vol. 17, p. 3554), and Mr. Dredger was afterwards subpœnaed to produce records showing such prices, as were numerous other witnesses (vol. 20, pp. 243, 254–258); but the records demanded were not produced and the witnesses stated that they could not be procured and were not in existence.

Whether the defendants could produce this information prior to 1895 or not, they did select 1895 as a basis of comparison with the prices of 1906 and the years between. As we shall show, the year 1895 was a year of abnormally high prices of refined oil, due to the abnormally high price of crude oil, and consequently a comparison of later years with that year wholly misrepresents the true movement of prices. It is significant that the defendants could make up from memoranda the information for no year back of 1895.

The defendants claim that between 1895 and 1906 there was a large increase in the supply of gold, and consequently a great increase in the prices of all leading commodities, and they attempted to show that oil had gone up less than the average of other commodities. (Johnson, vol. 17, pp. 3555, et seq.) We shall show that this is not true, but that oil has advanced more than the average of other commodities, if the proper basis of comparison is used. But, however this may be, in order to make a just comparison between the prices of oil and of other commodities we must know the cost of production, and there is absolutely no evidence in this case that the cost of producing oil has increased anything like as much as the prices or the cost of production of other

standard commodities in this country; in fact, what testimony there is tends to show that the cost of pipe-line transportation and refining has not advanced appreciably. There has been some increase in the cost of marketing, although not so much as in the prices of other commodities generally, but the cost of marketing is excluded from the net prices hereafter presented and need not be further considered.

There is another thing that would indicate that the prices of refined oil have advanced unreasonably in recent years, and that is that the crude production of this country has enormously increased during this period by the discovery and opening up of two of the greatest fields in the country—the Mid-Continent and the Illinois fields.

The total production of crude oil in the United States in 1895 was 52,892,276 barrels, while in 1906 it was 126,493,936 barrels, or practically two and one-half times as much. (Defendants' Exhibit 266.) While a considerable part of this increase is in the crude oil of the Texas and California fields, which is of low grade and only a comparatively small part of which is refined, nevertheless a very large increase has taken place in the production of the higher grade oils, as appears in greater detail from Petitioner's Exhibit 977. The production of the Pennsylvania, Lima, Mid-Continent, and Illinois fields, which furnish the higher grade oils, increased from about 51,000,000 barrels in 1895 to over 71,000,000 in 1906, and, as we shall show, the average price of these crude oils combined was lower in 1906 than in 1895.

We shall proceed to consider more fully the movement of prices of oil since 1895, and to compare it with the movement of prices of other commodities, although we have already stated we do not think that the advance in the prices of other commodities has in itself any bearing upon the advance in the price of oil, in the absence of specific evidence that the cost of oil has increased in similar measure.

The following table shows the average price of refined illuminating oil sold by the Standard Oil Company in the United States (exclusive of freight from the refinery and of marketing cost) in comparison with the average price of commodities generally. The price of oil is from the records of the Standard Oil Company; the price of commodities is an average computed by the Bureau of Labor, and is pre-

sumably, as is claimed by the defendants, fairly indicative of the general movement of prices. It includes 258 commodities. The price of commodities is expressed in what is known as an index number, which shows practically the percentage of change from year to year. In order to make possible a ready comparison, we have also computed an index number for refined oil.

(From Defendants' Exhibit 293.)

Year.	Price of refined oil per gallon.	Index number of refined oil.	Index number of price of commodities.
	Cents.		
1895	6.44	95.8	93.6
1896	5.85	87.1	90.4
1897	4.98	74.1	89.7
1898	5.14	76.5	93.4
1899	6.45	96.0	101.7
1900	6.82	101.5	110.5
1901	6.60	98.2	108.5
1902	7.19	107.0	112.9
1903	8.77	130.5	113.6
1904	8.36	124.4	113.0
1905	7.18	106.8	115.9
1906	6.88	102.4	122.5
Average for—			
1895–1898	5.60	83.4	91.8
1899–1902	6.77	100.7	108.4
1903–1906	7.80	116.0	116.2

The defendants, in using these statistics, made their principal comparison between the years 1895 and 1906, showing that the price of refined oil in 1906 was only about 7 per cent higher than in 1895, while the average price of commodities was 31 per cent higher. The testimony shows with entire clearness, however, that the year 1895 was one of exceptionally high price of oil, while on the other hand the year 1906 was one of exceptionally low price, so that a comparison between these two years alone, or a comparison between 1895 and any other year, is utterly misleading as showing the general tendency.

It appears from the prices in evidence and is admitted by Mr. Johnson, the statistician who testified in behalf of the defendants, on cross-examination, that the price of refined oil is largely dependent upon the price of crude oil and in a

general way follows its movements (though, as we shall show, the margin between the two has materially increased in recent years). It appears also from his testimony that the price of crude oil in 1895 was much higher than it had been for several years preceding or was for several years thereafter, this being true both of the Pennsylvania crude and of the Lima crude, the only kinds then produced in appreciable quantities.

The following are the changes in the prices of these two grades of crude from 1890 to 1898. (Petitioner's Exhibit 977.)

[Cents per gallon.]

Year.	Pennsylvania crude.	Lima crude.
1890	2.07	0.71
1891	1.60	.74
1892	1.32	.88
1893	1.52	1.07
1894	2.00	1.14
1895	3.24	1.67
1896	2.83	1.50
1897	1.88	1.12
1898	2.17	1.43

In other words, in 1895 the price of Pennsylvania crude was more than twice as high as it had been in 1891, 1892, and 1893, and the price of Lima crude was more than twice as high as it had been in 1890 and 1891, and very much higher than in 1892 to 1894.

Again, the Government showed that the prices of refined oil for export, as quoted at New York, were very much higher in 1895 than in the preceding and succeeding years (Johnson, vol. 17, p. 3582), averaging for 1895 7.36 cents per gallon, as compared with less than 5.5 cents for the three years 1892 to 1894 combined. The court will note, therefore, that the sharp decline in the price of refined oil for two or three years after 1895 gives an altogether erroneous view of the general tendency which would appear if prices for a few years before 1895 were shown.

The year 1906, on the other hand, was a year of exceptionally low prices, due largely to the increased production and lower cost of crude oil, but also in part, it may be, to the effect of the Government's investigations and the institution of this suit.

For these reasons we consider any comparison between these two years (1895 and 1906) alone as utterly misleading, and yet it was between these two years alone that the defendants made most of their comparisons, while some of their other statistical tables are made up by comparing the year 1895 with each succeeding year (reducing everything, as they call it, to an 1895 basis). Professor Johnson, the statistical expert whom the defendants put on the stand, was forced on cross-examination to admit the complete unfairness of this comparison, and that in view of the exceptional character of the prices in 1895 and 1906 a fairer judgment as to the relative changes in prices would be gained by taking a group of several years at the beginning and at the end of the period. (Vol. 17, pp. 3583–3586, 3592.) Mr. Durand, an expert statistician, the fairness of whose testimony the defendants have never challenged on cross-examination, likewise testified to the misleading character of any comparison taking 1895 as the basis, and stated that it was the custom of statisticians in making comparisons of prices to take groups of years, in order to avoid the effect of temporary causes. (Vol. 20, pp. 249–250.)

Being unable to obtain the prices back of 1895, we have therefore in our analysis of these price statistics grouped them according to periods of four years, from 1895 to 1898, from 1899 to 1902, and from 1903 to 1906, respectively. The average price of oil and the average for other commodities for these groups of years we have appended to the table on page 41, and we desire to call the attention of the court particularly to these averages. It will be observed that the price of oil for the first period of four years averaged 5.6 cents, while from 1903 to 1906 it averaged 7.8 cents, an increase of 2.2 cents per gallon, or 39 per cent. We shall comment further upon the significance of this advance when we have presented the figures of prices for refined oil combined with other products of petroleum. This increase in refined oil alone was much greater than that in the average price of commodities generally, which amounted to 26.6 per cent.

The defendants selected a number of commodities, admittedly choosing those which showed a greater advance in price between 1895 and 1906 than had taken place in refined

oil, and prepared an elaborate diagram comparing the prices for these two years, and these two only. (Defendants' Exhibit 296.) Aside from the care with which these commodities were selected for the purpose of the defendants, the use of these two years was, as we have already shown, completely misleading and unfair, and, in fact, meaningless. We have taken the prices of the same commodities for the period of four years from 1895 to 1898 and compared them with the prices for the four years 1903 to 1906, in a table and diagram, Petitioner's Exhibits 980 and 981. The court will see from these exhibits that refined oil went up more from the one period to the other than much the larger proportion of the commodities selected by the defendants; in fact, the rise in the price of oil was greater than the rise on 24 out of 32 commodities so selected.

But refined oil is only one of the products of petroleum, although it is the largest. The prices of some of the other products have gone up much more than that of refined oil. In particular, the price of naphtha has advanced much more than that of refined oil, and at the same time the production of naphtha has increased much more rapidly than that of refined oil, a larger percentage being taken from the crude now than formerly on account of the increased demand.

The defendants, again, made various comparisons of the price of naphtha with the price of other commodities, using the year 1895 as the basis, but for the reasons already presented, this year is not the proper basis for comparison. The average price of naphtha sold by the Standard Oil Company in the United States for the four years 1895 to 1898 was 5.87 cents, and for the four years 1903 to 1906 it was no less than 9.71 cents, an advance of 65 per cent, as compared with an advance of 26.6 per cent in commodities generally. (Computed from defendants' Exhibits 293 A and 293 C.)

It would of course be desirable and fair to present the combined average price for all the products manufactured by the Standard Oil Company, but we have been unable to obtain complete records of the prices of some of them, and the Standard has not undertaken to put them in evidence in this case. To be sure, the defendants furnished statistics showing the price of gas oil at the refineries (not indicating, however, the profit of the marketing companies, if any), but

they did not furnish statistics showing the quantity of gas oil sold in the various years, except two or three years, so it is impossible to combine the figures with those for the other products. The only products for which we are able to combine the prices, therefore, are illuminating oil, naphtha, and paraffin wax. Although paraffin wax is a product small in quantity, it commands a very high price, so that these three products constitute a very large proportion of the aggregate value of the output of the Standard Oil Company.

In Petitioner's Exhibit 985 the Government has shown the combined average price of these three commodities from 1895 to 1906. This average takes into account the quantities of the different products sold by the Standard Oil Company. As already stated, the quantity of naphtha sold has increased very much more than that of refined oil, and the same is true of paraffin wax. The following table shows these average prices for each year from 1895 to 1906, together with the average for the three periods of four years each, with a comparison of the prices of commodities generally:

Combined price of refined oil, naphtha, and paraffin wax.

Year.	Price per gallon.	Index number.	Index number of other commodities.
	Cents.		
1895	7.27	90.4	93.6
1896	6.68	83.1	90.4
1897	5.83	72.5	89.7
1898	6.07	75.5	93.4
1899	8.04	100.0	101.7
1900	8.24	102.5	110.5
1901	8.02	99.8	108.5
1902	8.65	107.6	112.9
1903	10.26	127.6	113.6
1904	9.59	119.3	113.0
1905	8.61	107.1	115.9
1906	9.24	114.9	122.4
Average for—			
1895–1898	6.46	80.3	91.8
1899–1902	8.24	102.5	108.4
1903–1906	9.42	117.2	116.2

It will be seen that the average price of these three principal products of refining increased from 6.46 cents for the period 1895 to 1898 to 9.42 cents for the period 1903 to 1906,

or 45.8 per cent, as compared with an increase of 26.6 per cent in the price of other commodities; and combining refined oil and naphtha, without counting paraffin wax, the increase is 49 per cent. (Petitioner's Exhibit 985.)

Even, therefore, if we should accept the argument of the Standard Oil Company that the price of oil must be judged only by comparison with the price of other commodities, it would still be true that the Standard has increased its prices far more than the prices of other commodities generally have increased. But the Standard has not shown that there was any reason why its prices should increase even as much as the average prices of commodities generally. The defendants have not shown that the cost of production has increased in any such proportion as the price of other commodities has increased. The principal elements of the cost of production (as far as they can be obtained) have in fact not increased appreciably from the one period to the other.

We secured from the Standard Oil Company a statement of the average cost of operating their refineries per barrel of crude oil for the years 1890, 1895, 1900, 1904, and 1906. (Vol. 20, p. 481.) These years were taken because of the enormous labor in preparing the figures for every year, and they are beyond doubt fairly indicative of the range of costs, and there is no contention of the defendants to the contrary. The average costs of refining per barrel and per gallon of crude oil were as follows:

Year.	Per barrel (42 gals.).	Per gallon.
	Cents.	*Cents.*
1890	17.33	0.41
1895	16.31	.39
1900	19.61	.47
1904	20.84	.50
1906	17.85	.42

It will be seen from this statement that the cost of refining in 1906 was less than 10 per cent higher than in 1895, and was actually considerably lower than in 1900 and 1904, although the average price of commodities was 30 per cent higher in 1906 than in 1895, and was also much higher in

1906 than in either 1900 or 1904. In any event, the cost of refining per gallon is so insignificant that the difference between 1895 and 1906 is only 0.03 cent, which obviously can not explain an advance of 2 or 3 cents in the price—about 100 times as much.

In the second place, we would call the attention of the court to the fact that, although the cost of marketing has increased considerably, the cost of marketing is wholly excluded from the prices of refined oil and naphtha used by the defendants in most of their exhibits and referred to above in this brief, and the increase therefore does not need to be taken into account. We would say further that the cost of transportation from the refinery to the point of destination is also excluded from the prices we have been discussing.

The only remaining cost, aside from crude oil, is the cost of pipe-line transportation. Even if there had been a very considerable percentage of increase in the cost of pipe-line transportation, it would not amount to any appreciable sum per gallon, because the cost of pipe-line transportation is extraordinarily low, as we shall more fully show later on. As a matter of fact, there is no reason to believe that the cost of pipe-line transportation has increased during the period from 1895 to 1906. The evidence secured by the Government regarding pipe-line costs covers only the years 1903 to 1906, and although the prices of commodities generally and the rate of wages in industries generally increased very materially during that period, as shown by the defendants' exhibits, the pipe-line costs did not increase. (Petitioner's Exhibits 283 to 289.)

INCREASE IN MARGINS BETWEEN CRUDE OIL AND REFINED PRODUCTS.

We come now to the question of the price of crude oil, which is the principal element in the cost of the refined product. The defendants undertook to show that the price of Pennsylvania and Lima crude oil had increased by a greater percentage than the price of finished products. This they did by presenting so-called index numbers of crude oil side by side with those of the refined products. (Defendants' Exhibits 300–303.) Index numbers are practically

percentages, and this was equivalent to comparing the percentage of the increase of the one with the percentage of the increase of the other.

It is self-evident, as Mr. Johnson, the statistical expert who testified for the defendants, admitted on cross-examination (vol. 17, p. 3594), that if the price of crude oil and the other costs increase by a given percentage, and if the price of the finished products increases by the same percentage, that would mean an equivalent percentage of increase in the profits. Consequently, an increase in costs does not justify a corresponding *percentage* of increase in price. If the costs increase by a given *amount*, say 2 cents per gallon, then an increase of the same *absolute amount* (not percentage) in the price of the finished product will leave the same amount of profit per gallon as before. We claim, therefore, that in any comparison between the prices of crude oil and the prices of finished products it is not the percentage of change which should be considered, but the actual difference between the two prices at one time as compared with another. This difference between the price of crude oil and the price of refined oil is commonly called the margin. Since the Standard buys most of its crude, it represents substantially the charge of the Standard for its services; that is, for transporting, refining, and marketing, including operating costs and profits.

We shall not undertake to show in detail the comparison of the prices of crude oil of the different fields with the price of each of the different products, as this would unnecessarily burden the court. We have already presented the combined average price of three of the principal products of refining—refined oil, naphtha, and paraffin wax—and this average we shall compare, first, with the price of Pennsylvania crude, and, second, with the combined price of all of the crudes of the principal fields whose output is handled by the refineries. We will also show the changes in the price of commodities generally, although, for the reasons already stated, we do not think that the advance in the price of other commodities has any bearing upon the question of the margin between the price of crude oil and the price of its refined products.

Comparison of the price per gallon of finished products with the price of Pennsylvania crude oil.

[Computed from Petitioner's Exhibits 977 and 985.]

	Average price of paraffin, refined oil, and naphtha combined.	Average price of Pennsylvania crude oil.	Margin.	Relative price of 258 commodities (index numbers).
	Cents.	*Cents.*	*Cents.*	
1895	7.27	3.24	4.03	93.6
1896	6.68	2.83	3.85	90.4
1897	5.83	1.88	3.95	89.7
1898	6.07	2.17	3.90	93.4
1899	8.04	3.07	4.97	101.7
1900	8.24	3.21	5.03	110.5
1901	8.02	2.88	5.14	108.5
1902	8.65	2.95	5.70	112.9
1903	10.26	3.79	6.47	113.6
1904	9.59	3.88	5.71	113.0
1905	8.61	3.31	5.30	115.9
1906	9.24	3.81	5.43	122.5
1895–1898, inclusive	6.46	2.53	3.93	91.8
1899–1902, inclusive	8.24	3.03	5.21	108.4
1903–1906, inclusive	9.42	3.70	5.72	116.2

In this table there is less of unfairness in comparing the year 1895 with other years, because the high price of crude was the principal cause of the high price of finished products in that year, and this table shows the difference between the price of crude and the price of finished products. Nevertheless, we consider it more reasonable, in judging the broad movement of prices, to compare groups of years than to compare any one year with any one other. We have therefore presented the averages for groups of four years. The court will see that the margin between the price of these finished products and the price of Pennsylvania crude has increased very greatly and very much more than the price of commodities generally. From 1895 to 1903 the margin increased from 4.03 cents to 6.47 cents, or over 60 per cent, while, despite some decline in the margin in 1906, it was still in that year 35 per cent higher than in 1895, while commodities were only 30 per cent higher than in 1895. Taking the four years 1895 to 1898, the average margin between these finished products and Pennsylvania crude oil

was 3.93 cents, while from 1903 to 1906 it averaged 5.72 cents, an increase of 46 per cent, whereas the price of commodities generally increased only 26.6 per cent.

The margin between Lima crude oil and these finished products shows substantially the same changes as in the case of Pennsylvania crude oil. The average margin for the four years 1895 to 1898, based on Lima crude, was 5.03 cents, and for the four years 1903 to 1906, 7.07 cents, an increase of 40 per cent.

But the court will remember that during the period covered by these price statistics the production of Pennsylvania and Lima crude oil has on the whole fallen off, while there has been a very great increase in the production of crude oil from the Mid-Continent and Illinois fields (Petitioner's Exhibit 977). While the price of Pennsylvania and Lima crude oil has increased, the price of Mid-Continent oil has greatly decreased, and with the great development of production in that field and in Illinois, where the prices are also low, the average cost to the Standard Oil Company for all the crude which it purchases has shown a very different movement from the price of Pennsylvania crude. The combined price of the crude of the four fields (Pennsylvania, Lima-Indiana, Mid-Continent, and Illinois), taking into account the relative production in each field, from 1895 to 1906, is shown in Petitioner's Exhibit 977. It there appears that the average price of these crude oils combined was actually lower in 1906 than in 1895, although the price of Pennsylvania and Lima crude was considerably higher in the later year than in the earlier. In order therefore to show the full relation between the prices of the finished products and their cost it is proper to compare this average price of crude oil in all these fields with the prices of these finished products. This we have done in the following table:

	Average price per gallon of paraffin, refined oil, and naphtha combined.	Average price per gallon of Pennsylvania, Lima-Indiana, Mid-Continent, and Illinois fields.	Margin per gallon.	Relative price of 258 commodities (index numbers).
	Cents.	*Cents.*	*Cents.*	
1895	7.27	2.62	4.65	93.6
1896	6.68	2.26	4.42	90.4
1897	5.83	1.58	4.25	89.7
1898	6.07	1.88	4.19	93.4
1899	8.04	2.70	5.34	101.7
1900	8.24	2.87	5.37	110.5
1901	8.02	2.53	5.49	108.5
1902	8.65	2.57	6.08	112.9
1903	10.26	3.31	6.95	113.6
1904	9.59	3.23	6.36	113.0
1905	8.61	2.50	6.11	115.9
1906	9.24	2.45	6.79	122.5
1895–1898, inclusive	6.46	2.09	4.37	91.8
1899–1902, inclusive	8.24	2.67	5.57	108.4
1903–1906, inclusive	9.42	2.87	6.55	116.2

From this table it appears that the margin between the price of crude oil for these four fields combined and the price of the principal finished products combined increased from 4.65 cents in 1895 to 6.79 cents in 1906, or 46 per cent. The increase was almost continuous, although the margin in 1906 was a little lower than in 1903. Taking the four years 1895 to 1898 together, the margin was 4.37 cents, while for the last four years covered by the table it was 6.55 cents, an increase of 2.18 cents, or exactly 50 per cent, as compared with an increase of 26.6 per cent in the average price of commodities.

INCREASE IN PROFIT PER GALLON.

As might be expected from these very great increases in the prices of finished products and in the margin between those prices and the prices of crude oil, there has been a great increase in the profits per gallon derived by the Standard Oil Company from its business. The defendants put in evidence a statement (Defendants' Exhibit 268) showing the quantity of crude oil consumed by the Standard interests in their refineries and in other ways (not the quantity handled by the pipe lines) in each year, and from this quantity,

in conjunction with the figures of profits already presented (see p. 8, *ante*), we have computed the average profit per barrel and per gallon for each year from 1882 to 1906, which was as follows (the figures for 1897 to 1899 being presented together, on account of the absence of specific figures of profits for the years separately, as shown at p. 12, *ante*):

Net earnings of Standard per gallon of crude oil consumed, 1882–1906.

	Crude-oil consumption (barrels of 42 gallons).	Net earnings.	Average earnings (cents).	
			Per barrel.	Per gallon.
1882	16,592,593	$12,388,507.16	74.7	1.78
1883	16,137,753	11,231,790.56	69.6	1.66
1884	16,796,822	7,778,205.73	46.3	1.10
1885	17,578,201	8,382,935.50	47.7	1.14
1886	19,192,009	15,350,787.68	80.0	1.90
1887	20,471,786	14,026,590.96	68.5	1.63
1888	21,913,352	12,757,727.81	58.2	1.39
1889	27,165,572	14,845,201.39	54.6	1.30
1890	29,793,042	19,131,470.84	64.2	1.53
1891	35,997,532	16,331,886.29	45.4	1.08
1892	38,657,489	19,174,878.30	49.6	1.18
1893	41,083,324	15,457,354.05	37.6	.90
1894	42,491,057	15,544,325.54	36.6	.87
1895	40,772,168	24,078,076.60	59.1	1.41
1896	43,356,290	34,077,519.10	78.6	1.87
1897	48,068,430			
1898	48,679,239			
1899	45,847,279			
Total, 1897–1899	142,594,948	142,330,905.21	99.8	2.38
1900	44,575,231	55,501,774.52	124.5	2.96
1901	48,527,527	52,291,767.61	107.8	2.57
1902	51,922,316	64,613,365.45	124.4	2.96
1903	52,378,513	81,336,994.27	155.3	3.70
1904	55,852,313	61,570,110.75	110.2	2.62
1905	60,030,736	57,459,356.08	95.7	2.28
1906	64,958,301	83,122,251.76	128.0	3.05

The court will see from this table that the average profit per gallon of crude oil handled by the Standard Oil Company has increased from 1.41 cents per gallon in 1895 to 3.05 cents per gallon in 1906. The maximum was in 1903, when the profit averaged no less than 3.70 cents per gallon. We may add, further, that even the profit of 1895 was higher than it had been for the four previous years. On the whole, the table shows plainly for the entire twenty-five years a

very marked increase in the average profits of the Standard Oil Company per gallon of product which it handles.

INCREASE IN PROFITS PER GALLON OF MARKETING COMPANIES.

Again, the profits of the marketing companies of the Standard Oil Company in the United States have very greatly increased. The following statement shows the average profit of the marketing companies on illuminating oil sold in the United States, and on naphtha, for the years 1895 to 1906. (See Defendants' Exhibits 293 B and 293 C.) These profits, it will be recalled, are exclusive of the large profits in pipe-line transportation and refining.

Year.	Profits on illuminating oil.	Profits on naphtha.
1895	1.20	1.06
1896	.92	1.14
1897	.96	1.14
1898	.88	.90
1899	1.20	1.34
1900	1.38	1.02
1901	1.64	1.34
1902	1.74	1.54
1903	1.92	1.82
1904	1.60	1.52
1905	1.76	1.36
1906	1.50	1.72

The profits for the last two years covered by this statement do not include the business of the Waters-Pierce Oil Company, and as this is one of the most profitable companies, the average for the entire United States, if available, would be somewhat higher. Even taking the figures as they stand, the court will see that the profits of the marketing companies on refined oil have, during the last six years, been nearly double what they were from 1895 to 1898, and on naptha there has also been a very great increase.

THE STANDARD OIL COMPANY FIXES THE PRICES OF CRUDE OIL AND ITS PRODUCTS THROUGHOUT THE UNITED STATES.

PRICES OF CRUDE OIL.

So far as crude oil is concerned, it appears that in the Pennsylvania, Ohio, Illinois, and Mid-Continent fields the Standard Oil Company absolutely fixes the price, publishes it daily, and its price is the public marketing price of crude oil.

It appears by the testimony that the Standard Oil Company produces only about 25 per cent of the crude oil which it manufactures. The rest, of course, it buys from a large number of independent producers. The significance, therefore, of the fixing of the price is apparent. It shows the strength of this monopoly. The way the price is made is as follows: Mr. P. S. Trainor is the purchasing agent of all the Standard companies (except one or two in certain particular fields); his office is at 26 Broadway, New York. He fixes the price after consultation with Mr. John D. Archbold, vice-president of the Standard Oil Company. We quote from Mr. Trainor's testimony (vol. 2, pp. 651, 652, and 659) as follows:

> Q. What price do you use—the price known as the Seep price, Joseph Seep Agency price?—A. I don't know what the Joseph Seep Agency price is.
>
> Q. You do not?—A. That is, what you mean by the Joseph Seep Agency price. My price and Joseph Seep Agency price are the same.
>
> Q. Are the same?—A. Yes, sir.
>
> Q. Now, you have seen published in the papers, haven't you, daily quotations of oil, Seep Agency?—A. Yes, sir.
>
> Q. You know what that means, don't you?—A. Yes, sir.
>
> Q. Well, what does it mean?—A. It means our bid price for oil at the wells.
>
> Q. At the wells?—A. Our offering price.
>
> Q. Now, do you publish any prices in the papers known as Trainor prices, or are they all published under the head of Joseph Seep Agency?—A. Well, that is a matter of the newspapers—the heading.
>
> Q. Well, you give them out, don't you? Mr. Seep does?—A. I give them out in New York, too.
>
> Q. You give them out in New York?—A. There is no heading under my name. It is a mere matter of the newspaper detail. If they choose to put the Seep

Agency prices over the heading, why, it don't affect me in any way.

Q. Where is your office?—A. 26 Broadway.

Q. How do you give out these prices? They are published constantly in the papers; will you explain that?—A. Well, I give out the price, I name the price to Mr. Seep to bid.

Q. And Mr. Seep names it to the public, does he?—A. Yes, sir; and I name it to the public in New York.

Q. You name it to the public in New York?—A. Yes.

Q. And how does that price reach the Pennsylvania, Ohio, Indiana, and Lima fields, whenever you wish to make a change?—A. I advise the Joseph Seep Agency what price to bid for oil in the Pennsylvania fields, the Ohio and Indiana fields, and the Kentucky fields.

Q. And when you give that advice, is it given out to the newspapers here as the market price?—A. Yes, sir.

Q. Whenever there is a change you do that in the same way?—A. They come in every day.

Q. What is that?—A. They come in to me every day, representatives of certain papers, and even telephone.

Q. And get the prices?—A. And get the prices. Also in our office we have the price list upon a board, so a producer can come in and see what the price is.

* * * * *

Q. Now, in making these prices which you give out, as you say, daily, do you consult with anybody, or is that——A. Yes; I consult with an official of the company.

Q. Of what company?—A. The Standard Oil Company of New Jersey.

Q. Of New Jersey?—A. Yes.

Q. With whom?—A. The vice-president, John D. Archbold.

Q. Daily?—A. Well, we are in touch more or less all the time.

Q. Anyone else?—A. Well, of course, I see other officials of the company in a general way.

Q. Do you have a committee that considers that at all?—A. No, sir.

Q. Have you any men who meet together daily?—A. No, sir.

Q. Or weekly?—A. No, sir.

Q. Or at any time?—A. No, sir.

Q. You simply go and talk with them informally?—A. Informally.

Q. No one that you know of particularly except Mr. Archbold?—A. Yes, sir; I get my instructions from him as a rule.

Q. Now, when you were with the Standard of New York, with whom did you talk? Also with Mr. Archbold?—A. Yes, sir.

Q. He was vice-president of the Standard Oil Company of New York?—A. Yes, sir.

Q. Has been for many years?—A. Yes, sir.

Q. And he is the official with whom you have talked about these prices?—A. Yes, sir.

Q. And after talking with him you announce the price?—A. Yes, sir.

It appears, therefore, from the testimony of this purchasing agent of the Standard Oil Company that the regular prices of crude oil which are published in the trade journals are in all cases nothing more nor less than the prices made by the Standard Oil Company, and these are the prices the producer gets. The other purchasers of crude oil in the principal oil fields simply follow the price offered by the Standard Oil Company, although in some instances they offer "premiums" on that price in order to secure oil.

That the Standard Oil Company thus makes the price of crude oil is definitely stated by Mr. Benson, secretary of the Tidewater Oil Company. This company, it will be recalled, works in substantial harmony with the Standard, which owns about 31 per cent of its stock. We quote from Mr. Benson's testimony as follows (Vol. 1, p. 224):

Q. Now, you spoke about the Seep price a little while ago in your answer. What do you means by the Seep price?—A. The Seep agency is the agency by which the oil is purchased by the affiliated Standard interests from the producers, and that agency makes the market for the crude oil throughout the country where it is established.

Q. Well, it is established anywhere, isn't it?—A. As far as I know, all through the East where we are doing business. I don't know about other places.

Q. Then the Seep agency price is the market price for oil?—A. The market price.

Q. And is that price followed by all the other dealers as the market price?—A. Well, all the other pipe lines follow that price.

Q. The pipe lines are the purchasers, are they not, of the oil?—A. The pipe lines are the purchasers of the oil. This has reference only to crude oil.

Q. Then, as a matter of fact, the Standard fixes the price of crude oil, does it?—A. Yes, sir; being the larger factor, of course it would fix it.

Q. And, as a matter of fact, does it do it?—A. Yes.

Q. There isn't any oil exchange where this commodity is bought and sold by which the price is fixed?—A. Not now; there was formerly.

Q. There was formerly?—A. Yes.

Q. When did that cease to exist?—A. I can't say exactly; I think about ten or twelve years ago.

Q. And since that time there has been no public exchange?—A. No, sir.

Q. How is this price fixed by the Standard until announced, so that the public knows what the price at a certain time is?—A. I haven't any idea. They simply announce from the Seep agency that the price on certain days is so much, and they give it to the newspapers. How it is fixed I don't know.

Q. I know, but you get it then through the press?—A. Through the press, and through official notices from the different Seep agencies.

Q. The Seep agencies issue official notices as to prices, do they?—A. Yes, sir.

Q. And do you know whether those prices are telegraphed to the different newspapers or how they get to them?—A. I don't know; I think they are given to the local press, wherever they have an agency. It is published in all the oil-region papers and in the New York papers.

Q. Then, that price, when so announced, becomes the market price until some change is made?—A. Yes, sir.

Mr. Benson says further, referring to the crude oil which the Tidewater Pipe Company itself buys from the Standard, which amounts to about 3,000 barrels a day, that the price of this oil is the regular market price fixed by the Standard; that the Tidewater has nothing to do with determining it, and is not consulted with regard to it. (Vol. 1, p. 225.) In other words, the Tidewater buys from the Standard at the price which the Standard fixes without any negotiation whatever.

Mr. Tarbell, treasurer of the Pure Oil Company, the largest independent oil interest in the eastern oil fields, likewise testified that the price of crude oil, as well as the price of refined oil, is fixed by the Standard Oil Company: "They make and have made the markets for export and domestic refined oils, as well as for crude oils, a great many years." (Vol. 1, p. 469.)

It is worthy of note that no witness called by the defendants undertook to deny that the Standard Oil Company absolutely fixes the price of crude oil in all the fields except perhaps Texas and California. Mr. Archbold, on direct examination, undertook to explain the Standard's manner of fixing the prices of crude. He said that they took into consideration the availability of the oil, the yield of the various products from the different kinds of crude, the volume of production, the world's supply and demand, etc. (Vol. 17, pp. 3235–3239.) On cross-examination he admitted that he and his associates were the ones who took these conditions into consideration. (Ibid., p. 3428.) It is perfectly evident from his testimony that the producer has nothing whatever to say about the price and no voice in fixing it. For instance, he said that when he had determined the price, that was the price the Standard paid; that the producer could accept this or refuse to sell his oil. He did claim, however, that the producer could run it into the Standard's tanks and pay storage at the rate of 25 cents per day per thousand barrels, and thereby hold it until the market should improve. It appears that this storage charge would amount to 9.1 cents per barrel per year, and would yield the Standard Oil Company $3,193.75 in a year for the use of a storage tank holding 35,000 barrels, the total cost of which is about $9,000. (Archbold, vol. 17, pp. 3429, 3430.) It is evident that with the prices of crude oil ranging often from about 30 cents to 80 cents per barrel in most fields at most times the storage charge of 9 cents per barrel per year, in addition to the interest on the investment of the producer in his oil, is so high that few producers can afford to hold oil for any length of time in anticipation of a rise in price.

It furthermore appears that there were formerly oil exchanges in Pittsburg, Oil City, and New York, where oil was bought and sold, the same as the other leading products of the country. (Trainor, vol. 2, p. 658; Benson, vol. 1, p. 224; Asche, vol. 2, p. 861.) The exchanges have been discontinued, for the reason that the Standard announced, about 1895, that it would no longer purchase oil on the basis of the prices quoted therein, and from that day to this the Standard has named the price which it would pay and the few other buyers have followed it.

The defendants called a man by the name of Case, who swore he was a producer in the Lima-Indiana field and sold oil to the Standard Oil Company; that he had made money; that he had had no difficulty with the Buckeye Pipe Line Company; that they were prompt in fulfilling their engagements; that they were reliable; and that the price paid had been reasonably remunerative to him. (Vol. 15, pp. 2554–2560.) Mr. Klauser, another producer in this field, gave similar testimony. (Vol. 15, pp. 2565–2568.) On cross-examination Mr. Case testified that the Seep Agency of the Standard Oil Company absolutely fixed the price, and that the producers had nothing to say about it. Among other things he said (vol. 15, p. 2562):

> Q. Have you ever known of a producer of oil to have anything to say about the price at all?—A. I don't know as he has even been in a position where he could dictate.
>
> Q. No; he couldn't say a word about it, could he?—A. No.
>
> Q. It is absolutely in the hands of the Standard Oil Company to fix the price, isn't it?—A. I think they could take both ends of it if they wanted to.

He also testified that the producers drilled for the oil, that it was a hazardous business, and many of the producers lost money. (Vol. 15, pp. 2563–2564.) No other producer except these two was called by the defendants to show the Standard's methods in purchasing or to testify regarding crude oil prices anywhere, except in Oklahoma within the last two years since the institution of this suit. We do not think that the record made by the Standard Oil Company since the Government's investigation and the institution of this suit, is at all a fair test of its dealings with the public.

It is in evidence that the price of oil in Oklahoma has decreased from about $1.20 to from 30 to 41 cents a barrel, according to the grade of oil (Petitioner's Exhibit 977; Litchfield, vol. 16, p. 2698), and that the price is practically fixed by the Standard Oil Company. These witnesses, called by the Standard from Oklahoma, testified that they thought, taking into consideration the overproduction at present, that the price paid by the Standard was a fair price in that field, and that The Texas Company and the Gulf Pipe Line Company paid less than the Standard. It appears that the Texas and Gulf companies have pipe lines from Port Arthur

to the Glenn pool in Oklahoma. This is only one oil pool, and of course a very small part of the total area of the oil fields of Oklahoma, and it is a pool in which the production has been especially prolific. The Standard's price in this pool is the price it pays also elsewhere, where the production is less concentrated and rich. The fact that the Texas and Gulf companies may be able to buy some oil in one pool, at a time of overproduction, at a less price than the Standard is willing to pay seems to us entirely immaterial in this case.

It further appears that while 41 cents is all that the producer can get for his oil in Oklahoma it is really worth more money. Mr. Messner, of the Cornplanter Oil Company, Warren, Pa., testified that the oil is better than the Illinois oil, which sells for about 67 cents (Petitioner's Exhibit 977), and is worth to him in Pennsylvania within 15 per cent of the price of the Pennsylvania oil at his refinery, which price is $1.98, but that the freight rate being so high it is impossible for him to transport it, the freight rate being something like $1.50 a barrel from Oklahoma. (Messner, vol. 20, p. 264–266.) Mr. Tarbell also testified that he ships Oklahoma oil by pipe line to Port Arthur and by steamship from Port Arthur to the refinery of the Pure Oil Company at Marcus Hook, Pa., and that it costs him $1.35 a barrel laid down at his refinery; that it is more profitable to him than Pennsylvania oil at $2.18, that being the cost at the refinery. (Tarbell, vol. 20, pp. 302–303.) Of course it is evident that to the Standard Oil Company, which brings the oil from Oklahoma in its pipe lines at a very low cost, this oil is worth a great deal more money than it pays.

The Standard Oil Company, however, offered evidence tending to show that the production in new fields always exceeded the immediate demand and that it was necessary for it to store a large amount of oil at a large expense; but it appears that the price which it pays in these fields is often very low and a price which enables it to store and use the oil later at enormous profits. This will apparently be true of the oil now being stored in Oklahoma, to judge from previous experience. For instance, in the Lima-Indiana field the testimony shows that this field was opened about 1886; that it did not reach large production until 1888

and 1889; that during these years down to 1890 the Standard was buying and storing large quantities of this oil, the price paid being only 15 cents a barrel. (Case, vol. 15, p. 2563.) In fact the price down as late as 1892 did not exceed 37 cents a barrel. (See Petitioner's Exhibit 977, giving the production and price each year.) It appears that the Standard stored about 23,000,000 barrels of this oil during those early years. (Burton, vol. 16, p. 2645.) As the price of this oil has since ranged from 88 cents to $1.14 a barrel, it was evidently a very profitable enterprise for the Standard Oil Company. Furthermore, it appears that during these early years the Standard purchased or leased a large proportion of the total oil-producing wells of the Lima-Indiana field, so that in 1890 it produced 55 per cent of the total output of the field. It doubtless acquired these wells at a very low cost by reason of the low price it was paying for the oil. (Archbold, vol. 17, p. 3424.)

Mr. Burton, the defendants' witness, undertook to explain the reason why the price of Lima-Indiana oil was so very low during these years when the Standard was purchasing and acquiring these leases and purchasing this large surplus stock of oil. He said the reason was that this oil contained sulphur and that during those early years prior to about 1890 the Standard was experimenting to eliminate this sulphur and did not know certainly whether it would prove suitable for refining; and that therefore the oil was then only valuable for fuel. (Burton, vol. 16, p. 2633, et seq.) But it appears that, notwithstanding this alleged uncertainty, the Standard as early as 1889 commenced the construction of a very large refinery at Whiting, Ind., solely to use these oils, that it in fact constructed a pipe line to Whiting during 1888; and that at the same early time it also built a refinery at Lima to handle these oils. It hardly seems reasonable that the Standard would expend large sums of money solely to refine this oil unless it was certain it would be valuable for such refining. (Burton, vol. 16, p. 2647.) It further appears that other concerns from the date of the earliest production successfully refined these oils and sold them in the market in competition with the Standard. (Fretter, vol. 20, p. 306.)

THE STANDARD'S CONTROL OF THE PRICES OF FINISHED PRODUCTS.

Not less complete is the control of the Standard Oil Company over the price of the finished products of petroleum. Thus the "official" price of export oil is nothing more nor less than the price named by the Standard Oil Company. This also is admitted by the Standard officials. Mr. Asche, who is in charge of the sales department of the Standard Oil Company of New York, says that the price of export oil, as published by the newspapers and as followed by the New York Produce Exchange, is the price fixed by the export sales department of the Standard Oil Company of New York, Mr. Archbold, the vice-president, having charge of the determination of it. Mr. Asche says (vol. 2, p. 861):

> Q. You name the price, don't you?—A. The Standard Oil of New York export sales department sells the export oil, and Mr. Archbold, our vice-president, gives us the price of the oil.
>
> Q. Gives you the price of the oil?—A. Yes, sir.
>
> Q. Every day?—A. No; whenever there is a change.
>
> Q. Mr. Archbold gives you the price?—A. Yes, sir.
>
> Q. And that governs all sales of export oil?—A. Yes, sir.
>
> Q. Of the various grades?—A. Of the various grades; yes, sir.
>
> Mr. MILBURN. You mean all their sales?
>
> Mr. KELLOGG. That is what I mean—all their sales of oil.
>
> WITNESS. All our sales; yes.
>
> Q. Those prices are given out by you to various brokers in New York, aren't they?—A. To brokers and to the various customers.
>
> Q. Every time there is a change?—A. Yes, sir.
>
> Q. And they are posted by you in the office, aren't they?—A. I don't know what you mean by "posted."
>
> Q. Bulletined, aren't they, sometimes?—A. No; we have no bulletins. Our salesmen or clerks all know about the price.
>
> Q. Now, there is no oil exchange in New York, where there are quotations or prices, is there?—A. There is no oil exchange, no sir; but the Produce Exchange of New York provides rules governing the oil trade.
>
> Q. And they use your prices, don't they?—A. I assume they take the export price.
>
> Q. And the export price is the price Mr. Archbold fixes, isn't it?—A. Yes.

Q. What?—A. Yes, sir.

Q. And you give it out to the trade journals, too, don't you?—A. Yes, sir; they come to the office and get it.

Q. They come in the office and get it every time there is a change?—A. Yes, sir.

Q. When there is a change, do you notify these brokers, so they can get it?—A. Well, the brokers are in and out all day long, and when they come in they get the change when one takes place.

Q. Do you know of any other export price quoted in New York except that which Mr. Archbold gives out through you?—A. Why, I believe there are other export prices quoted here in New York, by competitors.

Q. Did you ever know of any?—A. Why, I know we have some competition here in New York, people that buy oil from our competitors.

Q. Well, do you know of any other quoted prices that are published in the journals and used by the brokers, except those given out by you?—A. Well, as far as I know our price is the price; the others all follow it; they take that price.

Q. That is what I mean. You don't know, then, of any other quoted price published in the papers and used by the brokers than the price you give out?—A. I only know of the one quotation.

Mr. Benson, of the Tidewater Oil Company, which sells to the Standard Oil Company 77 per cent of the export oil which it manufactures, likewise states that the Standard fixes the price of export oil (vol. 1, p. 225):

Q. Who fixes the price for export oil?—A. Well, I imagine the larger factor does. They make their price and everybody else has to follow.

Q. Whom do you mean by the larger factor?—A. The Standard Oil Company.

Q. They fix the prices and everybody else follows?—A. Yes.

Q. They fix the price at which your oil is sold?—A. They fix the price at which their oil is sold, and we can't get any more and we don't want any less.

Q. They, therefore, fix the price at which your oil is sold?—A. That is the necessary consequence.

Q. And the oil they take from you they take at their price, do they not?—A. Yes.

The testimony of Mr. Tarbell that the Standard Oil Company fixes the price of both export oil and domestic oil has already been quoted (p. 57, *ante*).

Mr. Lee, a director of the Pure Oil Company, who has been for many years connected with the independent oil interests, says that from 1879 down the Standard Oil Company has practically fixed the prices of both crude and refined oil. (Vol. 6, p. 3160.)

Further evidence as to the policy of the Standard Oil Company at certain times in cutting the price of export oil severely as a means of attacking the independent oil interests, which is presented particularly by Mr. Tarbell and Mr. Lee, will be discussed in another connection (pp. 80–81, *post*). It is sufficient to state at this point that these witnesses testified that the Standard has at times arbitrarily fixed the price of export oil, without regard to the actual conditions of supply and demand, solely for the purpose of injuring the independent interests.

VARIATIONS IN PRICE ACCORDING TO THE DEGREE OF COMPETITION.

The evidence and exhibits in this case show plainly that there is no uniform price of refined oil and naphtha in the United States. Oil is not sold to the trade in appreciable quantities at central markets from which the purchaser pays the transportation charge to destination. Instead, through the marketing system of the Standard Oil Company, which has already been described, the oil is transported by the Standard itself, through one or another of its marketing concerns, to the towns throughout the entire United States, and is there, for the most part, delivered directly to retail dealers. The result is that the price of oil may be, and actually is, widely different in different towns.

It has already been shown also that the proportion of the business of marketing refined oil which is controlled by the Standard Oil Company varies widely in different sections of the country, although in every large section the Standard has much more than half of the trade. The more detailed records of the Standard Oil Company introduced in evidence, showing the percentage of the refined oil business done by competitors, indicate a still wider variation in the proportion of the trade controlled by the Standard when single cities or small areas are compared than when large areas are compared. In a very few cities and towns the pro-

portion controlled by the Standard Oil Company falls below 50 per cent, while in many others it is 100 per cent.

As already stated, even after making allowances for the difference in cost of transportation and cost of marketing, the prices in those areas and towns where the Standard has little or no competition are generally much higher than in places where it has a large degree of competition. This appears clearly by the fact that the profit per gallon of the marketing companies is far higher in noncompetitive than in competitive territories and places. This means obviously that the Standard Oil Company arbitrarily fixes the price of oil in all places where it has little or no competition without regard to any competitive market value. Even in places where there is a considerable degree of competition the evidence of independent oil dealers and manufacturers indicates that the price is in nearly all cases fixed by the Standard and that the competitors merely follow that price and seldom if ever go below it, for the reason that to do so simply invites further cuts by the Standard, until there is no profit in the business.

While therefore it is true that in certain sections of the country and certain towns there is a sufficient degree of competition to lead the Standard to sell oil at what may properly be called a competitive price, it is still the fact that the Standard determines the prices throughout the country. At times, indeed, the Standard sells oil at less than the normal competitive price, and even at less than cost. In so doing, however, it is just as truly fixing the price arbitrarily as where it charges an exorbitant profit, for it employs such extreme price cutting as a means of destroying the business of independent concerns in order that, having driven them out, it may subsequently charge monopoly prices.

The manner in which the Standard Oil Company does its business makes it possible for it to monopolize the marketing of refined oil and gasoline and to absolutely control the prices. It has tank stations and tank-wagon marketing facilities in substantially every part of the United States, except some sparsely settled desert or mountainous country, where it ships in barrels or drums. Having, as it has had for many years, substantially 90 per cent of the marketing

business, it is evident that all of the independents combined (with their 10 per cent of business) could not reach all parts of the United States with facilities for competing with the Standard Oil Company. This forces the independent manufacturer to select a limited territory, in which he will build tank stations and tank wagons, because it appears that, as a general thing, oil sold in barrels will not compete with oil delivered by tank wagons at equal prices, and the price is usually half a cent or a cent a gallon less. When the independent therefore selects his territory, it is entirely within the power of the Standard to lower the price in that territory while keeping it up or raising it in the territory where it has the exclusive sale. There will be no loss to the Standard in its aggregate profits, or if there is it is so small as not to figure appreciably in its total income. To illustrate: Take the State of Ohio, where the Standard Oil Company of Ohio does business. It appears that the prices there are not much more than one-half what they are in the intermountain region known as the "Denver territory." Suppose the Standard Oil Company in Ohio loses money on every gallon of oil it sells for a term of years until all of the independents are driven out from that territory; it can make it up in Colorado, California, or some other territory.

This policy of local price cutting to attack competitors, and the consequent extraordinary differences in the price of oil and the margins of profit thereon in different towns and different areas, is further discussed in connection with the subject of unfair competition.

III.

THE STANDARD'S USE OF PIPE LINES AS A MEANS OF RESTRAINING AND MONOPOLIZING THE ENTIRE OIL INDUSTRY; ITS DESTRUCTION OF COMPETITION IN THE PIPE-LINE BUSINESS; ITS REFUSAL TO ACT AS A COMMON CARRIER; ITS EXCESSIVE RATES FOR THE TRANSPORTATION OF OIL THROUGH ITS PIPES; AND ITS CONTRACTS WITH RAILROADS AND OTHER PIPE LINES IN RESTRAINT OF TRADE.

It is evident from what has been said in our brief (vol. 1, pp. 138–142) that the Standard Oil Company has practically a monopoly of the pipe-line transportation of crude oil in and from the principal oil fields of the United States. With the exception of the pipe lines controlled by the Pure Oil Company (to wit, the United States Pipe Line, the Producers Oil Company (Limited), and the Producers and Refiners Oil Company (Limited), which together are hereinafter referred to as the Pure Oil lines), there has been, until very recently, practically no competition in the United States in pipe-line transportation, except possibly in Texas and California.

We have already reviewed the history of the way in which the Standard interests, during the period from 1873 to 1882, acquired control of practically all the pipe lines then existing (see brief, vol. 1, pp. 43–45). We have seen how the United Pipe Lines in 1877 brought together, under Standard domination, nearly all the gathering lines in Pennsylvania, and afterwards reorganized them into the National Transit Company; and how the pipe lines already controlled by the Standard, in conspiracy with the railroads, succeeded in destroying the competition of the Columbia Conduit Company, the Equitable Pipe Line, and other independent concerns during this period. We now desire to call the court's attention to the efforts of the Standard Oil Company to prevent competition in the pipe-line business since about

1882. Since that time, as before, the Standard has attempted, as we shall show, by every means, fair or unfair, not only to prevent the construction of competing pipe lines but to destroy or secure control of lines already established.

Three independent pipe-line concerns have sought to build pipe lines from the Pennsylvania oil field to the Atlantic seaboard. The first of these, the Tide Water, the Standard succeeded in forcing into alliance with itself; the second, the Crescent Pipe Line, was bought up by the Standard Oil Company; and the third, the United States Pipe Line, it endeavored in every way to destroy or control, but never fully succeeded in doing so. We desire to call the court's attention more particularly to the history of these cases.

TIDEWATER OIL COMPANY AND TIDEWATER PIPE COMPANY (LIMITED).

The answer denies the allegation of the petition that the defendants control the Tidewater Pipe Company or the Tidewater Oil Company (which are the same interest) either by ownership of stock or through contracts for the division of business or through other agreements or understandings with said companies. (Petition, vol. A, pp. 50–51; ans., vol. A, pp. 411–412.)

The testimony will show that the Tidewater concern should be, naturally, one of the largest competitors of the Standard Oil Company; that it owns a pipe line from western Pennsylvania to the New York Harbor, being the only pipe line (other than those of the Standard) ever able to get across the State of New Jersey to this harbor, and that it owns large refineries; but that, by stock ownership and agreements and working arrangements, the Standard Oil Company has suppressed the competition of the Tidewater, and that it now markets practically all of the products of this concern. The history of the long struggle of the Tidewater for independence and of the agreements it ultimately was forced to make illustrates the methods of the Standard Oil Company. From the bill and answer and proofs the following facts appear:

The Tidewater Pipe Company (Limited) is a limited partnership created under the laws of Pennsylvania, one of the features of which is that such partnerships have stock, but that only members duly admitted into the partnership can

vote the stock. It has $625,000 of stock. The stock of this company is now owned by the Tidewater Oil Company, organized under the laws of New Jersey and having a capital stock of $19,967,000, of which the Standard Oil Company owns about 31 per cent, viz, $6,210,000, standing in the name of H. C. Folger, jr. (Petitioner's Exhibit 26.) This company was formerly a subsidiary company of the Tidewater Pipe Company (Limited), of whose capital of $625,000 the Standard Oil Company then owned about $188,000, or the same percentage. (Benson, vol. 1, pp. 206 and 208.) The stock in the Tidewater Pipe Company was acquired by parties in the interest of the Standard Oil Company in 1883, as will be hereafter narrated in showing the attempts of the Standard to get control of the company.

Mr. Josiah Lombard, Mr. Robert D. Benson, and Mr. Benjamin F. Warren, officers of the Tidewater companies, were subpœnaed and their testimony will be found in the record, as follows: Mr. Warren (vol. 1, p. 189), Mr. Benson (vol. 1, p. 195), Mr. Lombard (vol. 1, p. 243).

The Tidewater Pipe Company was organized in 1878 and started the first pipe line from the oil regions to the tidewater. This pipe line was completed as far as Williamsport, Pa., in 1879, and finally to the tidewater in about 1883, the oil meanwhile having been transported from Williamsport to tidewater by the Reading Railroad. (Warren, vol. 1, pp. 189 and 194.)

Mr. Lombard, of the then existing firm of Lombard, Ayres & Co., which had a large refinery on the New York Harbor, gives a very interesting account of the struggles of the early refiners to maintain their business against the Standard Oil Company. The evidence is in part summarized elsewhere (pp. 173–174, post). He shows how they attempted to get equal rates with the Standard Oil Company and were refused by Mr. Rutter, of the New York Central, Mr. Cassatt and Mr. Scott, of the Pennsylvania, and by the Erie. This difficulty forced Mr. Lombard and certain other refiners who had held out against the Standard to build the Equitable pipe line and to buy cars to transport oil to Buffalo over the little cross road known as the New York, Buffalo & Pittsburg. The refiners built canal boats to transport the oil thence by the Erie Canal and down the Hudson River

to New York Harbor. This proved unsatisfactory, owing to the freezing of the canal in winter, and they were compelled to buy oil in the market wherever they could get it. About this time, in 1879, the Tidewater Pipe Company had started to build. Mr. Lombard took stock in the enterprise and was to obtain oil through the pipe line. Other concerns in New York, including A. S. Jenny & Son, Yennie & Burke, Bush & Denslow Company, the Gregory refinery, McGoey & King, and Wilson & Anderson, were also to take oil from this pipe line, but the Standard bought them all out about 1880. (Vol. 1, pp. 258 and 259; Archbold, vol. 17, p. 3323.) This forced the Tidewater Company to build its own refineries, and the Seaboard Oil Company, Ocean Oil Company, and Chester Oil Company were established for that purpose and built such refineries. The Standard then undertook to buy Lombard, Ayres & Co., the Tidewater Oil Company, and affiliated interests, and Mr. Lombard testified that about 1882 he had a conference with John D. Rockefeller and John D. Archbold, in which they offered a million dollars for Lombard, Ayres & Co., but the latter declined to sell unless all the Tidewater interests were bought out at the same time. They were then asked by Rockefeller what it would take to buy the whole concern, but certain of the parties interested insisted on from $11,000,000 to $15,000,000, and no deal was made. (Vol. 1, p. 250.)

About six months later the Standard undertook to get control of the Tidewater companies in another way. Mr. Benson, who has been connected with the Tidewater since about 1881, testified fully as to the details of this attempt and the subsequent transactions with the Standard Oil Company. Briefly, the facts are as follows:

At a meeting of the Tidewater Pipe Company (Limited), held in Titusville January 17, 1883, there were present A. M. Perrin, H. L. Taylor, D. McKelvy, John L. McKinney, T. S. McFarland, E. G. Patterson, D. B. Stewart, George A. Berry, and John Satterfield. Of these men, Taylor, McFarland, McKinney, Satterfield, and Stewart evidently represented Standard interests; they, together with one John Pitcairn, jr., subsequently, on August 11, 1884, transferred their shares to George W. Colton, the total number thus transferred being 1,884. (Benson, vol. 1, p. 208.) Colton

at that time represented the Standard Oil Company, and the shares were subsequently transferred to other persons representing the Standard Oil Company, at one time being held by John H. Cuthbert, later by William G. Rockefeller, and finally by H. C. Folger, jr., and it appears undisputed that the Standard Oil interests have controlled this amount of stock in this company, and corresponding amounts in the Tidewater Oil Company which succeeded it, from that day to this. (Ibid.)

At that meeting of January 17, 1883, every one except McKelvy and Perrin banded together and voted for Satterfield, McFarland, and Stewart as managers of the company, thereby turning the control over to Standard Oil interests, and immediately thereafter they undertook to take possession of the office. Mr. Benson, sr., president of the Tidewater, and his son, Robert D. Benson, were summoned from New York. (Benson, vol. 1, p. 225.) They went to Titusville, barricaded the office, and kept forcible possession of it until a suit could be brought to declare the meeting void, which suit was subsequently decided in the Pennsylvania courts in favor of the Tidewater company and against the Standard Oil interests on the ground that, although the meeting was held at the time and place named in the by-laws, there had been no notice thereof to the members generally, and the majority of them had failed to attend, and that the action of those who did attend was not in good faith. (See opinion, Petitioner's Exhibit 23.)

The minutes of the meeting were then sealed up and treated as expunged. New managers were elected, leaving the control in the hands of the independent parties—Mr. Benson, Mr. McKelvy, Mr. Lombard, and their associates. These minutes were never opened until, under subpœna of the United States court, they were brought into court in New York and opened and put in evidence in this case. (Benson, vol. 1, p. 198, et seq.)

It is worthy of note that previous to this attempt to thus get control of the Tidewater Company many obstacles were thrown in the way of the construction of the pipe line to the seaboard. Mr. Warren, who had charge of the construction, in his testimony details these obstacles. (Vol. 1, pp. 189–195.) The railroad companies opposed their obtaining a right of

way, and various individuals appeared along the proposed route and acquired exclusive rights of way over strips of land running at right angles to the proposed right of way of the Tidewater line, some of these extending as far as 40 miles. Although there is no testimony directly connecting the Standard Oil Company with this opposition, the Standard Oil Company was the only company that had an object in fighting the pipe line, and in other cases (notably the United States Pipe Line), we have directly shown that the Standard Oil Company's representatives resorted to similar means.

While the Standard interests failed to secure control of the Tidewater Company by the transaction above described, it appears that the Standard Oil interests obtained a sufficient stock ownership in the Tidewater to entitle them to a director, whom they have always had upon the board; and very soon after this attempt to elect the officers of the Tidewater, the Standard Oil Company and the Tidewater Company made a settlement and pooled the business. This was done by two separate agreements entered into on the same date—October 9, 1883—being Exhibit 13 to the petition, vol. A, pp. 152–160. The proof of the authorization of these agreements was shown in the record books of the Tidewater Company (Benson, vol. 1, p. 210 et seq.), and was finally admitted by the defendants in this case. (Vol. 3, p. 1425.)

One of these agreements was made between the National Transit Company and the United Pipe Lines, Standard concerns, of the one party, and the Tidewater Pipe Company (Limited), of the other party. The other agreement was made between the Standard Oil Company of Ohio, the Standard Oil Company of New York, and the Standard Oil Company of New Jersey, refining companies, of the one party, and the Ocean Oil Company, the Chester Oil Company, and Ayres, Lombard & Co., refining concerns connected with the Tidewater, of the other party. These two agreements taken together, in substance, provided that the Standard concerns should have 88½ per cent of the business of gathering crude oil, transporting it by pipe lines, and manufacturing it, and that the Tidewater concerns should have 11½ per cent of the business. Reports were to be made of the details of this business, and the Standard guaranteed an annual profit of $500,000 per annum to the Tidewater, and should the profit

fall short of that the Standard agreed to make it up. These agreements were to run for a period of fifteen years from October 1, 1883. They remained in effect until canceled on March 9, 1891, as of date January 1, 1890, the cancellation evidently being dated back in order to antedate the passage of the Sherman Antitrust Act. (Vol. 1, p. 215; Petitioner's Exhibit 27.) In the meantime (May 13, 1890) another agreement was made between the Tidewater Company and the National Transit Company, one of the Standard companies. This agreement (Petitioner's Exhibit 28) has been renewed and is still in force. (Vol. 1, pp. 216 and 217.) By reference to this exhibit it will be found that it provided that the Tidewater Company procured the right to purchase from the Standard, at the western terminus of the trunk pipe lines in Pennsylvania, from 2,000 to 3,000 barrels of oil per day, and Mr. Benson testified that during all of these years it has purchased about the same amount of oil, and that this amount, with the amount it procures through its own local gathering pipe lines, constitutes a sufficient amount to occupy its trunk pipe line and run its refineries at about the same capacity as they had in 1883. This never quite equaled, he says, the 11½ per cent, and, of course, at the present time, by reason of the extension of the Standard's business, is very much less than that percentage.

It appears by his testimony that the Tidewater Company has never extended its business beyond the original amount done at the time it made its first pooling agreement with the Standard Oil Company. Furthermore, it is not in any sense a competitor of the Standard Oil Company, and never has been since 1883.

It appears that approximately 95 per cent of the refined oil of the Tidewater Company is exported, and of this amount the Standard handles 77 per cent, being all of that which is shipped in bulk to European countries. The balance, or 23 per cent, is what is known as "case-oil business," sold in South America, Africa, and the West Indies, and it does not come in competition to any particular extent with the Standard products. Of the 5 per cent which is sold in the United States, 97 per cent is sold through the Standard Oil Company. (Benson, vol. 1, p. 218 et seq.)

Mr. Benson testified that his company owns some crude oil wells in southern Ohio and West Virignia, but the oil is sold to the Standard pipe lines; that it also acquired some wells in Indian Territory, and sells the oil to the Prairie Oil and Gas Company, a Standard concern. (Vol. 1, p. 221.)

Mr. Benson also testified that the Standard Company absolutely makes the prices of the crude and refined oil in this country. The Standard owns a little over 31 per cent of the stock of the Tidewater Oil Company, which latter controls the Tidewater Pipe Company, and it has a representative in the board of managers. It is absolutely certain from this testimony that all competition between these concerns is suppressed, in the purchase of crude oil, in the transportation by pipe line, and in the sale of the products.

BUYING UP OF THE CRESCENT PIPE LINE COMPANY.

During the early nineties the Mellons, of Pittsburg, constructed a gathering pipe line in southwestern Pennsylvania and West Virginia (known as the "Mellon Line") and a trunk pipe line (known as the "Crescent Pipe Line," one of the defendants in this case). The gathering line was a very considerable system, while the trunk line was 271 miles long, extending from western Pennsylvania to Marcus Hook, on the Delaware River, near Philadelphia, being at that time the only independent pipe line reaching the seaboard. The same interests also engaged in the construction of refineries at Marcus Hook.

In 1895 the Standard bought the stock of the Crescent Pipe Line Company, and acquired at the same time the gathering lines and the unfinished refineries at Marcus Hook. These gathering and trunk lines Mr. Archbold admitted to have been at the time the largest competitors of the Standard Oil Company outside of the Tide Water, and we believe we have shown that the Tide Water was not a competitor. (Payne, vol. 1, pp. 375 and 376; Archbold, vol. 17, pp. 3325–3327.) The Geological Survey report on petroleum for the year 1900 (p. 33) gives the business of the Mellon Lines, the gathering system, as more than 3,000,000 barrels in 1893. This it will be remembered was before the United States Pipe Line was completed to the seaboard. In order to enable it to purchase these Crescent and Mellon lines the Standard Oil

Company undertook to procure the repeal of the law of Pennsylvania prohibiting the consolidation of pipe lines, which had been passed in 1883, and in 1893 such a repeal bill was passed in the legislature, over the opposition of the producers and independent refiners. The bill, however, was vetoed by Governor Pattison, who was the governor who had signed the original anticonsolidation law of 1883. At the next session, in 1895, another bill was introduced in the legislature of Pennsylvania to repeal this law. It was supported by the Standard interests, but the independents opposed it. After it was passed by the legislature, a hearing in opposition to the bill was had before the governor, but he signed it, and immediately thereafter the Cresent interests were bought up. (Lee, vol. 6, p. 3160.)

THE STANDARD'S ATTACKS UPON THE UNITED STATES PIPE LINE AND ITS ALLIED COMPANIES AND ITS ATTEMPTS TO CONTROL THEM.

We now desire to call the court's attention to the history of the Producers' Protective Association, the Producers' Oil Company (Limited), the Producers and Refiners' Oil Company (Limited), the United States Pipe Line Company, and the Pure Oil Company, all of which interests are now allied as one concern competing with the Standard Oil Company. These interests finally succeeded under the most adverse circumstances in constructing a pipe line to tide water at Marcus Hook, near Philadelphia; but the Standard Oil Company opposed the construction in every possible manner, undertook to get control by buying up the stock, to embarrass the lines by buying the associated refineries, and finally to ruin the company by raising the price of crude oil and lowering the price of refined oil at the seaboard. The history of these struggles is given by Mr. Lewis Emery, Mr. J. W. Lee, and Mr. William W. Tarbell, who were connected with the enterprise, Mr. Tarbell now being the general manager.

THE PRODUCERS' OIL COMPANY (LIMITED).

It appears from the testimony that during the latter part of the eighties the price of crude oil was very low, and that an arrangement was made between the Standard Oil Company and the producers for a restriction of their output,

but this arrangement did not continue long and was unsuccessful. (Archbold, vol. 17, p. 3247.) The price of crude oil continued low and the crude-oil producers were discouraged. About this time certain bills were introduced in the legislature of Pennsylvania, the purpose of which was to restrict the rates for transporting oil by pipe lines and to provide for the delivery of such oil to persons desiring it at different points; these bills were supported by the crude-oil producers generally and by the independent refiners, and would have benefited their interests. They were openly opposed by the Standard Oil Company and ultimately failed of passage. (Lee, vol. 6, pp. 3158–3159.) About the time when the first bill (known as the "Billingsley bill") was rejected, the producers of crude oil formed an association known as the "Producers' Protective Association," one of the requirements of membership being that members should have no interest or affiliation with the Standard Oil Company. (Lee, vol. 6, p. 3161; Tarbell, vol. 1, p. 464.) Meetings of this association were held to consider the means of improving conditions of the oil industry, and it was finally decided to build a pipe line independent of the Standard pipe lines. By May, 1891, $600,000 had been raised, and on June 9 in that year the Producers' Oil Company (Limited) was organized under the laws of Pennsylvania. It was authorized by its articles of association to enter any branch of the oil business it thought proper for the purpose of creating a competitive market for crude oil. (Lee, vol. 6, p. 3161.) It was organized as a limited partnership instead of as a corporation, in order to prevent the Standard Oil Company from acquiring an interest in the concern. (Lee, vol. 6, p. 3162.)

One reason why the producers undertook the construction of this pipe line was that, although the price of crude oil at the wells at this time was very low, from 55 to 65 cents per barrel, the price of crude at the seaboard was quite high, and it was thought that oil could be collected by the pipe line and shipped thither by rail for export at a good profit. (Vol. 6, p. 3162.)

The Producers' Oil Company (Limited) commenced the construction of a short pipe line from the McDonald oil field, in southwestern Pennsylvania, to the railroad at Coraopolis,

a point near Pittsburg. It built tanks and cars for rail shipment from Coraopolis to New York Harbor. The company was prepared to commence business early in 1892, but it never shipped a barrel of crude oil to New York in the manner planned, because by this time the price of crude at the seaboard had so declined that there would have been a loss instead of a large margin of profit. (Lee, vol. 6, p. 3163.)

PRODUCERS' & REFINERS' OIL COMPANY (LIMITED).

As a result of this condition, the Producers' Oil Company (Limited) found itself receiving a large amount of oil which it was unable to dispose of. The plan was accordingly formed of building a pipe line to connect this pipe line with the independent refineries at Titusville, Oil City, and other points in northwestern Pennsylvania, some distance away. These refiners, having to pay 20 cents pipage to the Standard Oil Company, were anxious to get crude from an independent source. The producers who controlled the Producers' Oil Company held meetings with the independent refiners, and finally established the Producers' and Refiners' Oil Company (Limited), with a capital of $250,000, of which the Producers' Oil Company (Limited) took $170,000, and the refiners the remainder. This company was also made a limited partnership, with a view to excluding the Standard interests. It built a pipe line from Coraopolis, the terminus of the Producers' Oil Company's line, to Oil City and Titusville. This was completed about the end of 1892 and began furnishing the refiners there with crude oil, and has continued to do so ever since. (Lee, vol. 6, pp. 3163–3164.) We shall show a little later how the Standard Oil Company attacked this enterprise by cutting the prices of export oil at the seaboard, this attack being directed likewise against the United States Pipe Line.

It appears from the testimony of Mr. Lee that this independent concern, in constructing this pipe line from Coraopolis to Oil City, met with active opposition from the Pennsylvania Railroad, but finally succeeded in finding a place where the Pennsylvania had no legal right of way over the land it was using, and by acquiring the fee thereto succeeded in crossing under the railroad. They also met oppo-

sition from the Western New York & Pennsylvania Railroad, and were forced to organize a corporation in order to take advantage of the Pennsylvania law permitting the pipe line corporations to condemn a right of way. (Lee, vol. 6, p. 3183.) It is worthy of note that the Standard never seems to have met opposition from the railroads in crossing their tracks with its pipe lines.

UNITED STATES PIPE LINE COMPANY.

Growing out of this same condition of depression in the crude oil producing business and in the independent refining business of western Pennsylvania, Mr. Lewis Emery, who had a refinery at Bradford, Pa., and others undertook, about the same time that the enterprises we have previously described were started, to build a pipe line to the seaboard. The United States Pipe Line Company was organized in 1891 as a corporation under the laws of Pennsylvania. It undertook to build a double pipe line for both refined and crude oil from the oil regions to the seaboard. This pipe line was ultimately connected with the Producers' and Refiners' pipe line at Oil City, running thence to Warren and Bradford, Pa., where independent refineries were located, and thence east. The same refiners and other interests who had taken part in the organization of the Producers' and Refiners' Oil Company (Limited) were largely interested in the United States Pipe Line. (Emery, vol. 6, p. 2651; Tarbell, vol. 1, p. 467; Lee, vol. 6, p. 3165.)

This pipe line was first constructed to Wilkes-Barre, Pa., a point which was reached about June, 1893, and from which point oil was shipped by rail to New York Harbor. (Tarbell, vol. 1, p. 469.) The object was to build through to New York Harbor.

We now wish to call attention to the remarkable obstructions which were placed in the way of the building of the United States Pipe Line, even on that part of it lying in Pennsylvania and New York. This obstruction came in part directly from the agents of the Standard Oil Company and partly from the railroads, but there is every reason to believe that the railroads were acting in the interests of the Standard Oil Company, as their own interests would scarcely be injured by the pipe line, and as they had (so far as the evidence

shows) never opposed the construction of pipe lines by the Standard Oil Company.

The first obstruction met by the pipe line was from the Erie Railroad within the city limits of Bradford. An injunction was issued to prevent the pipe line from passing under the road, but the court finally decided that it had a right to do so. (Emery, vol. 6, p. 2651.) The Pennsylvania and Erie railroads again attempted to prevent the construction of the pipe line under their tracks a little farther east, and the pipe line company was again compelled to go into court to secure the right of way. In Tioga County, Pa., it had the same experience. (Emery, vol. 6, pp. 2651–2652.)

After succeeding in passing these railroads, and while the line was being extended eastward, the Standard Oil agents undertook to block the line in various places from securing rights of way across private lands, but these efforts were unsuccessful. (Emery, vol. 6, p. 2652.)

The first plan of the United States Pipe Line Company was to make a connection with the New York, Ontario and Western Railroad at Hancock, N. Y., and to ship thence over that road to Cornwall-on-the-Hudson. The contract had already been entered into with the New York, Ontario and Western to that effect, including the right of the company to lay its pipe on the right of way of the railroad later if it saw fit to do so. In order to make a connection with the New York, Ontario and Western at Hancock it was necessary to pass under the Erie Railroad bridge over the Delaware River near Hancock. Mr. Emery had a conference with Mr. Thomas, president of the Erie Railroad, who told him there would be no objection to going under this bridge and sent his engineer to Hancock to make arrangements for the exact location of the pipe. Meantime, Mr. Emery had the pipes laid from both sides, ready to be connected. Later, however, the railroad company ran up two locomotives and two wrecking cars, with about 75 men, and placed inflammable material over the ends of the pipe line, so that if it was attempted to connect them they could be so heated that it would be impossible to do so. The forces of the pipe line company and of the railroad remained there for three months, but the pipe line was finally forced to abandon this route and to give up its arrangements with the New York,

Ontario and Western. The pipe was taken up for 70 miles back, to a place called Athens, Pa. Mr. Emery says that some of the men that were with the railroad force protecting the right of way at Hancock he knew to be connected with the Standard Oil Company. (Vol. 6, pp. 2654–2655.)

From Athens the pipe line was then laid to Williamsport, Pa., where a further delay of five or six months was experienced in the endeavor to cross the Delaware, Lackawanna & Western and Lehigh Valley railways, the matter having to be taken into the courts. Other difficulties in crossing railroads were also encountered before the pipe line finally reached Wilkes-Barre and made connection with the Central Railroad of New Jersey, with which it had a contract for transporting the oil thence to the seaboard. In all of the cases which were brought into the courts in securing these rights of way across railroads the pipe line company met in each instance a brief admitted by the attorney in one of the cases to have been drawn by Mr. M. F. Elliott, then and now general attorney for the Standard Oil Company. (Emery, vol. 6, p. 2655.)

Even more serious than these attempts to prevent the physical construction of the pipe line were the attacks which the Standard Oil interests made at this time upon the independent refiners and the independent pipe lines by the manipulation of the prices of oil. The principal market of the independent refiners who were associated in these pipe-line enterprises was for export. The United States Pipe Line actually commenced transporting oil as far as Wilkes-Barre in June, 1893. It appears from the testimony of Mr. Westgate, Mr. Lee, and Mr. Tarbell that up to about the end of 1892 the price of refined oil for export at New York had been a fair price, giving a fair margin above the price of crude oil. They testified, however, that about the beginning or middle of 1893 the price of crude oil was advanced and the price of refined oil greatly reduced, and that this condition continued throughout the latter part of 1893 and all of 1894 and into 1895. According to Mr. Lee, at one time during this period the price of illuminating oil in bulk on board vessel at the seaboard was lower than the cost of crude at the refineries, and at one time it sold as low as 1.925 cents per gallon on board ship. (Lee, vol. 6, p. 3164.) Mr. Tarbell

says that the price of crude, which had been in the neighborhood of 50 cents, went up during 1893 to about 80 cents per barrel (about 2 cents per gallon), while the price of refined oil for export was around 2½ cents per gallon. (Tarbell, vol. 1, pp. 469–470.) Mr. Westgate gave similar testimony (vol. 6, pp. 2841–2842). All three of these witnesses agreed that there was an absolute loss of large amount at the prices of export oil prevailing during this fight.

The statements of these witnesses regarding the movement of prices at this time are borne out by the statistics in evidence in this case. The Government introduced from the report of the Geological Survey a table showing the price of refined oil for export at New York from 1892 to 1900 by months, with the yearly averages. This table gives the prices in barrel, but it is stated that the oil is loaded on bulk steamers at 2.5 cents per gallon less. Making this deduction from the prices quoted, it appears that during most of the year 1892 the price of export oil at New York in bulk was from 3½ to nearly 4 cents per gallon; that in October, 1892, it was 3.53 cents per gallon; that it then commenced to fall rapidly, reaching 2.65 cents in July, 1893, which price remained substantially unchanged until November, 1894. (Vol. 17, p. 3582.)

Meantime, in the face of this decline in the price of the finished product, the price of crude oil advanced. The average price of Pennsylvania crude oil at the wells for the year 1892 was 56 cents per barrel, for the year 1893 it was 64 cents, and for 1894, 84 cents, the equivalent per gallon being 1.33 cents, 1.52 cents, and 2 cents, respectively. (Petitioner's Exhibit 977.) In 1894, therefore, with an average price of refined oil at the seaboard of 2.69 cents, the price of crude at the wells was 2 cents, leaving only 0.69 cent to cover the cost of transportation from the wells to the refineries, the cost of refining, and the cost of transportation to the seaboard. Mr. Lee testified that this great reduction in the price of oil at the seaboard was not justified by business conditions, but was purely artificial, brought about by the Standard Oil Company in its attack upon the independent refiners. (Vol. 6, pp. 3164–3165.) Mr. Tarbell says that the reduction in price was due to the action of the Standard Oil Company, which then, as it does now,

controlled the price of export oil as well as of crude oil. (Vol. 1, p. 469.)

The independent pipe lines, which had been organized in the interests of the producers and independent refiners, assisted the refiners during this period of depression by reducing their rates for pipe-line transportation. The United States Pipe Line finally carried oil for nothing, and the Producers and Refiners' Oil Company, which had been charging 15 cents per barrel for piping the crude oil to the refineries, reduced its rate to 8 cents and possibly 6 cents per barrel. (Tarbell, vol. 1, p. 468; Lee, vol. 6, p. 3167.)

It appears from the testimony that this prolonged attack upon the independent interests by the manipulation of prices greatly disheartened them and led many of the independent refiners to desire to sell out to the Standard Oil Company. Mr. Lee, who had been active in the organization of the three pipe-line companies described, and was an officer in them, went to New York for the purpose, as he termed it, of urging the Standard Oil Company to lift its "heavy hand" from the independent refiners. He called upon Mr. S. C. T. Dodd, general counsel of the Standard Oil Company. Mr. Dodd said that he agreed with Mr. Lee, but he would have to take up the matter with Mr. Archbold and others, and the next day Mr. Dodd informed him that the Standard people "had considered the matter and would do nothing, that they thought they have matters their own way abroad." (Lee, vol. 6, pp. 3168–3169.)

About this same time (the beginning of 1895) the independent refiners of western Pennsylvania sent a committee, consisting of H. P. Burwell, S. Y. Ramage, and John Fertig, to New York to see the Standard officials and ascertain whether better conditions could not be brought about. They returned and reported that the Standard would do nothing except purchase the refineries; that it was willing to buy them all out; that it would pay for the pipe lines the cost of construction plus 12 per cent. The members of this committee advised the independents to sell out, but many of them were unwilling to quit business. Another committee was sent to New York in January, 1895, but it reported the same as the first. A large meeting of the refiners was held thereupon, and a plan was formulated for the organization of a

company called the Pure Oil Company, which should act as a marketing agent of export oil. The history of these transactions is described by Mr. Lee in full. (Vol. 6, pp. 3169–3172.) (See also Tarbell, vol. 1, pp. 468–469; Westgate, vol. 6, pp. 2842–2845.)

As a matter of fact, Messrs. Burwell, Ramage, and Fertig, the first committee which went to New York, did actually sell out their refineries to the Standard Oil Company about this time. These were among the largest refineries connected with the independent pipe-line interests, and the cutting off of this part of the business of these pipe lines was a serious injury to them. Moreover, through the acquisition of these refineries, and in connection with it, the Standard Oil Company acquired some stock in the independent pipe-line companies. (Westgate, vol. 6, pp. 2842–2843; Lee, vol. 6, pp. 3178–3179.)

EFFORTS OF THE STANDARD OIL COMPANY TO GET CONTROL OF THE INDEPENDENT PIPE LINES.

We now wish to describe more fully the attempts of the Standard Oil Company to get control of the Producers and Refiners' Oil Company and the United States Pipe Line Company.

It appears that one John J. Carter, a producer of crude oil, owned from the outset 300 shares out of the 60,000 shares of the Producers' Oil Company (Limited), which company the court will recall in turn controlled the Producers and Refiners' Oil Company (Limited) by stock ownership. Later he appeared as the owner of more than 13,000 shares of the stock of the Producers' Oil Company (Limited), and asked to have it transferred to him on the books, but this was refused by the company under the limited partnership law, which required all transfers to be approved by vote of members. This refusal was based upon Mr. Carter's connection with the Standard Oil Company. Still later Mr. Carter got possession of a majority of the stock of the company. It appeared in subsequent litigation that this stock, other than the original 300 shares which he had held, did not actually belong to Mr. Carter but had been purchased by the National Transit Company and loaned to him. The National Transit Company had bought the stock from time to time over a

period of about two years, and had paid a high price for it, in some cases as much as 120 above par.

Carter had demanded not only that the shares which he had in his possession should be transferred to him on the books, but that, since he had a majority of the stock, he should be elected president of the company. When the other members of the company refused to elect him to membership on the entire amount of stock which he held, he brought suit to compel them to do so, but the Supreme Court of Pennsylvania held that he was not entitled to vote the stock except by being elected a member of the company with respect to said stock. As already stated, it had been the intention of the organizers of this company to prevent Standard encroachments of just this character by taking advantage of the limited partnership laws of Pennsylvania. (See *Carter* v. *Producers' Oil Co. (Ltd.)*, 182 Pa. St.)

For a full account of these transactions, see Lee, vol. 6, pp. 3176–3178; Tarbell, vol. 1, pp. 472–473.

Aside from this attempt to control the Producers' Oil Company, and through it the Producers and Refiners' Oil Company, the Standard, as already stated, secured some stock in the Producers and Refiners' Oil Company itself through the acquisition of the refineries of Messrs. Burwell, Ramage, and Fertig and one or two others acquired about the same time. The amount of stock thus acquired was about 13 per cent of the total issue of the company. (Lee, vol. 6, p. 3178; Tarbell, vol. 1, p. 472.)

More successful was the attempt of the Standard Oil Company to acquire an interest in the United States Pipe Line Company. This was a corporation, having been organized as such in order to take advantage of the right of eminent domain conferred upon corporations in the pipe-line business. The Standard Oil Company from time to time acquired shares of the stock of this company until finally it had $393,000 par value out of a total of about $1,200,000. It appears that much of this stock was acquired in connection with the buying up of independent refining and manufacturing concerns which held stock in the company and whose product was handled to some extent by it. It appears quite likely that one of the principal motives of the Standard Oil Company in buying up these concerns was to secure control

of this stock, although it also had the effect of reducing the number of independent refineries and of reducing the patronage available for the independent pipe lines.

The Standard Oil Company, having got control of this large amount of stock in the United States Pipe Line Company, sought to take part in the stockholders' meetings and to vote for officers. The other stockholders refused to permit them to attend the meetings, but the Standard interests then appealed to the courts, and the lower court held that they had a right to attend the meetings and vote for officers. The question whether the company was entitled to exclude them from participation was never decided on its merits by the court of last resort. Since that time, however, the Standard representatives have attended meetings and the Standard has had a representative on the board of directors of this company, and sometimes as many as three such representatives. These representatives have participated in the meetings of the board of directors, and know all about the business management and methods of the company, which is a great advantage to the Standard Oil Company, even though it can not control the policies of the United States Pipe Line Company. (These transactions are described by Emery, vol. 6, pp. 2661–2662; Lee, vol. 6, pp. 3178–3179; Westgate, vol. 6, pp. 2843–2844; Tarbell, vol. 1, pp. 471–472.)

Mr. Archbold practically admitted these attempts to control the Producers' Oil Company (Limited) and the United States Pipe Line Company. He admitted that the stock was bought in the Producers' Oil Company or the Producers and Refiners' Oil Company "as an investment and for the purpose of being in the way of knowing what was being done." (Archbold, vol. 17, pp. 3326–3327.)

It was evidently for the purpose of preventing the Standard Oil Company from getting more complete control of the United States Pipe Line Company that the stock of that company was later put into a voting trust, and still later a majority of it transferred to the Pure Oil Company, which, as we shall show later, has its stock also in a voting trust for the avowed purpose of preventing the Standard Oil Company from getting control of it. (Archbold, vol. 17, pp. 3327–3328.)

FURTHER MANIPULATION OF PRICES IN 1895 AS AN ATTACK UPON THE INDEPENDENT INTERESTS.

Returning now to the further history of these independent pipe lines, and to the Standard's attacks upon them, it appears that about the time when the Pure Oil Company was first organized, in 1895, there was a remarkable change in the prices of oil. We have already shown, in discussing the general movement of prices, how abnormally high were the prices of crude and refined oil in 1895. It now appears that this abnormal condition of 1895 was at least in part due to an attempt of the Standard Oil Company to destroy the business of the independent refiners which were affiliated with the independent pipe lines under discussion. It will be remembered that throughout most of 1893 and all of 1894 the price of export oil at New York had been extremely low, practically the same as the price of crude at the refineries, leaving a loss on the business. On the basis of these low prices, a number of independent refiners affiliated with the United States Pipe Line Company had made future contracts for the delivery of oil to one Philip Poth, of Mannheim, Germany, who had for some time been handling the greater part of the export oil produced by these concerns. The refiners did not have the crude on hand to manufacture this oil. Mr. Lee says that the extraordinary advance in the price of crude oil, and the corresponding advance in the price of refined oil for export, during the early part of 1895, was due to the Standard's knowledge that these refiners had sold short, and was an attempt to embarrass them and cause them to fail. According to Mr. Lee's testimony, the price of crude oil, which during the year 1894 had averaged 84 cents per barrel, began to rise very rapidly by January, 1895, and by the middle of April had reached $2.70 a barrel. We have already pointed out that the average price for the entire year 1895, notwithstanding considerable decline after April, was $1.36 per barrel, as compared with 84 cents in 1894. Again, while refined oil for export had been selling at about 2½ cents per gallon in bulk on board steamer at New York, the price rapidly rose coincident with the advance in the price of crude oil. Mr. Lee testified that some oil was sold about the 17th or 18th of April at as high as 11 cents per gallon on board ship at New York, and the published quota-

tions of export oil in barrels show an average for the entire month of April, 1895, of 9.12 cents, as compared with 5.15 in November, 1894. (Johnson, vol. 17, p. 3582; Mr. Lee's testimony of this subject is in vol. 6, pp. 3173–3174, 3192–3193.)

As already stated, the Pure Oil Company had been organized in January, 1895, with the object of handling export oil produced by these independent refiners. The great change which took place immediately thereafter, as we have shown, and which apparently did not have the desired effect of destroying the business of the independent refiners, brought it about that for some time the Pure Oil Company did not actually enter business. (Lee, vol. 6, pp. 3173, 3175.) About a year after its organization, however, viz, about 1896, the Standard Oil Company bought out the business of Mr. Philip Poth, of Mannheim, Germany, who had purchased from 90 to 95 per cent of the oil exported by this particular group of refiners. The buying up of Mr. Poth's business destroyed the outlet for the oil of these refiners in Europe. A committee appointed by the refiners went to Germany, and, at great expense and inconvenience, established for the Pure Oil Company tank stations and marketing facilities, chartered steamers, and commenced sending oil to these stations in Europe. (Lee, vol. 6, p. 3176; Tarbell, vol. 1, pp. 469–471; Emery, vol. 6, pp. 2663–2665.)

Mr. Archbold attempted to put a different light upon this transaction with regard to Mr. Poth. We do not see that his testimony in this regard has any particular bearing on the justice of the Standard's policy in attacking these independent refiners. (Archbold, vol 17, pp. 3629–3630.) Since this time, in 1896, when the Pure Oil Company established stations in Europe, it has been in active business as an agency for the control of the marketing of refined oil for a number of independent refiners who are largely stockholders in it and whose oil is handled by the independent pipe lines, viz, the Producers and Refiners' pipe line and the United States Pipe Line.

The Pure Oil Company in 1904 also built a refinery at Marcus Hook. About 1900, moreover, it acquired a controlling interest in the stocks of the Producers' Oil Company (Limited), the Producers and Refiners' Oil Company (Limited), and the United States Pipe Line Company, the object

being to unite the management of these concerns, which had already been closely related to one another, and to more thoroughly assure the prevention of the Standard from getting control of any of them. With this same object the Pure Oil Company's stock was also put in a voting trust. (Tarbell, vol. 1, p. 474.)

Mr. Archbold (vol. 17, p. 3328) characterized the Pure Oil Company as a monopoly and a trust because of this voting-trust arrangement. We believe the court will readily see, in view of the strenuous and unjust attacks which the Standard Oil Company had made upon these independent pipe lines and independent interests, and of the repeated attempts which it had made to get control of them by stock purchase, the establishment of a voting trust was absolutely necessary and was in the interests not only of the parties thereto, but of the public generally, in order to prevent the suppression of this independent competition.

RENEWED OPPOSITION TO THE EXTENSION OF THE UNITED STATES PIPE LINE TO THE SEABOARD.

We have already stated that the United States Pipe Line in 1893 was completed only to Wilkes-Barre, Pa., making use of rail shipments thence to New York Harbor and the seaboard. About 1895 the pipe line undertook to complete construction to New York Harbor. In this endeavor it encountered the same sort of opposition that had been encountered in reaching Wilkes-Barre, and it was finally found impossible to cross New Jersey at all. There was no law in New Jersey giving pipe lines the right of eminent domain, which made the situation different from that in Pennsylvania.

Opposition was first encountered from the Pennsylvania Railroad where the pipe line sought to cross its right of way along the eastern shore of the Delaware River in New Jersey. The pipe line company, however, was able to purchase an acre of ground along the river bank to which the railroad company did not have title, and laid its pipe under the road on that ground.

When the Delaware, Lackawanna and Western Railroad was reached, at Washington, N. J., serious opposition was again encountered. The pipe line company bought the fee

simple title to land at a point where there was a culvert in the railroad, and placed a pipe through this culvert and put a force of men in charge. The next day two locomotives, a wrecker, and 150 men attempted by force to eject the employees of the pipe line from their position and to tear up the pipes. A hand-to-hand fight ensued, and finally an agreement was reached by which the matter was taken into court. Mr. Emery testifies that some of the same men who opposed the passage of the pipe under the tracks of the Erie Railroad at Hancock, N. Y., some two years before, were also among the representatives of the Delaware, Lackawanna and Western Railroad in the trouble at Washington, N. J. (Emery, vol. 6, p. 2658.)

After a delay of six months, the lower court decided in favor of the right of the pipe line to cross the tracks. The pipe line was then built about 50 miles farther to another junction with the Central Railroad of New Jersey, whence oil was shipped by rail to New York.

In the attempt to extend the pipe line still farther to a terminus on New York Harbor it was found that there were long strips of land running up and down across the country over which exclusive rights of way had been granted to other parties. These rights of way had been taken out by Standard men, including the same men who pursued similar tactics in Pennsylvania and New York. (Emery, vol. 6, pp. 2658, 2777.)

The decision of the lower court, which had enabled the pipe line to build under the Delaware, Lackawanna and Western Railroad, was finally reversed by the higher courts of New Jersey, and the pipe line company, finding from its experience that it was impossible to cross this State in the absence of a law giving the right of eminent domain to pipe lines, abandoned the attempt altogether, tore up all of its pipes in New Jersey, and began to build south from Wilkes-Barre to Marcus Hook, on the Delaware River, below Philadelphia, in Pennsylvania, finally completing its line to the seaboard only after several years from its initiation in 1892. (Emery, vol. 6, p. 2658.)

We believe it is perfectly evident that all this opposition to the construction of the pipe lines of the independent interests was organized by the Standard Oil Company and was

wholly in its interest. Various witnesses on behalf of the Government testified that they had never heard of any instances where railroads had opposed the construction of Standard pipe lines across or along their tracks, and the defendants have put in no testimony tending to show any such opposition to the construction of their pipe lines. Mr. Archbold, in fact, admitted on cross-examination that the Standard's arrangements with the railroads for laying pipes under their tracks had always been amicable, and admitted that in some cases the pipes not merely cross the tracks but were laid for long distances along railroad rights of way; this being true notably of the pipe of the Prairie Oil and Gas Company, which, for a long distance between Oklahoma and Chicago, follows the tracks of the Atchison, Topeka and Santa Fe Railroad. (Archbold, vol. 17, pp. 3334, 3335.) Mr. Emery testifies that about half of the Standard's pipe line between Olean, N. Y., and Saddle River, N. J. (the New York Transit Company's line) is actually laid on the right of way of the Erie Railroad. (Vol. 6, p. 2659.)

We believe there is no better illustration of the lengths to which the Standard Oil Company will go to destroy competition than the history of the pipe lines and enterprises now associated and under the control of the Pure Oil Company. The attempts to prevent the laying of the pipes, the manipulation of prices with the object thereby to cause ruin to the independent interests, the buying of stock with the object of controlling these independent pipe lines, the buying up of refineries which were affiliated with the pipe lines with the object of destroying their volume of business, and finally, the buying up of their principal customer abroad—these were the succession and accumulation of attacks which only the most strenuous endeavors of the independent interests enable them to survive.

ACQUISITION OF OTHER COMPETING PIPE LINES.

Aside from the acquisition or attempted acquisition of control of the Tidewater, the Crescent, and the United States pipe lines, which are the only non-Standard lines ever built to the Atlantic seaboard, the Standard has since 1882 bought or obtained control of various other important competing pipe lines which did not reach the seaboard. These, so far as covered by specific testimony, we will now briefly mention

It appears that during the seventies Holdship & Irwin, the Waverly Oil Works, A. D. Miller & Sons, and other refiners at Pittsburg, had been procuring their crude oil from the Columbia Conduit Company, which reached Pittsburg from the Butler oil fields. The Standard bought this pipe line in 1877, and thereafter several of these Pittsburg refiners leased or sold their works to the Standard Oil Company. (Irwin, vol. 6, pp. 3015–17.) On the expiration of their lease in 1883, Holdship & Irwin, in partnership with Mr. Reighard of the Empire Oil Works, constructed pipe lines from Washington County, Allegheny County, and Butler County to Pittsburg, these three lines together being known as the Pittsburg Pipe Line Company. They furnished oil to Holdship & Irwin and Reighard, and also to the Waverly Oil Works and to A. D. Miller & Sons.

Mr. Irwin, one of the owners of this pipe line, testifies that the Standard's pipe lines attacked it by paying extra prices, known as premiums, on crude oil in the territory which it reached, particularly in Butler County. The Standard finally ran the premium up to 25 cents a barrel. These practices forced the pipe line to sell out to the Standard in 1886. (Irwin, vol. 6, pp. 3015–22; Reighard, vol. 6, pp. 3131–34.) The Standard apparently continued to operate the pipe line under the same name for two years longer, as the Geological Survey reports that the Pittsburg Pipe Line transported over 300,000 barrels of oil in 1888. (Geol. Survey Rept. on Petroleum, 1900, p. 33.) The refineries of Holdship & Irwin and Reighard were acquired at about the same time as the pipe lines and were dismantled.

After this sale of the Pittsburg Pipe Line Mr. Reighard, who had been one of the parties in that pipe line, built new refineries at Pittsburg and Philadelphia, and also a new pipe line, known as the "Western and Atlantic." This was much larger than the Pittsburg Pipe Line, its business during the year 1890 amounting to 3,109,477 barrels. (Geol. Survey Rept. on Petroleum, 1900, p. 33.) These pipe lines and refineries were built about 1888. The Standard bought them up in 1890. The refineries were dismantled and the pipe lines ultimately absorbed into the system of the National Transit Company. (Reighard, vol. 6, pp. 3131–3136; Archbold, vol. 17, pp. 3330–3332.)

We have stated in vol. 1 of our brief (pp. 103–115) that, as we believe the evidence clearly shows, in 1899 the Standard, through the General Industrials Development Syndicate (Limited), purchased the stock of the Manhattan Oil Company, owning a large pipe line through the Lima-Indiana field, together with the refinery connected therewith. With the exception of the Pure Oil lines, this was much the largest independent line in the country. This line furnished to the Standard after its acquisition in the neighborhood of 2,000,000 barrels of oil a year. (Vol. 1, pp. 357, 358.) The Standard also, through the same English concern, purchased the stock of the Indiana Pipe Line and Refining Company, which had a trunk pipe line of about 180 miles in length from the Indiana field to Kankakee, Ill.

RESTRICTIVE CONTRACT BETWEEN THE NATIONAL TRANSIT COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY.

In this connection, and as further evidence of the conspiracy between the Standard pipe lines and the railroads to control the commerce in carrying crude petroleum, we refer to the contract between the Pennsylvania Railroad Company and the Standard Oil Company, under date of August 22, 1884, which contract was not canceled until the year 1905, although it is claimed that the railroad did no business under the contract after 1893. (Justice, vol. 3, p. 1489; Archbold, vol. 17, p. 3452.) This contract is set forth as Exhibit 14 attached to the petition (vol. A, p. 160). The execution of the contract is admitted by the answer. It consists of two agreements, dated August 22, 1884, which substantially provide for pooling the business of carrying crude and refined oil from western Pennsylvania to the seaboard between the National Transit Company's pipe lines and the Pennsylvania Railroad.

The first agreement guaranteed to the Pennsylvania 26 per cent of the total crude and refined oil so transported by all existing carriers, whether rail or pipe, and provided that if the Pennsylvania did not move its 26 per cent, the National Transit Company would give it at Milton, Pa., crude oil enough to make up this amount (subdivision second), and

that for its haul from Milton (which is about the middle of the State) the railroad should have half of the through rate from western Pennsylvania to the seaboard.

Under the second agreement, dated the same day and between the same parties, it was provided that instead of actually delivering to the railroad company the oil necessary to make up this 26 per cent, the National Transit Company should transport such oil for the railroad company from Milton, Pa., to the seaboard, turning over to the railroad company substantially the profit of such transportation, viz, the difference between a fixed compensation allowed to the pipe line and the railroad company's proportion (one-half) of the through rate from western Pennsylvania.

Thus it was provided that whenever the through rate from Olean, N. Y., to Philadelphia should be 40 cents per barrel, the Transit Company should receive 8 cents per barrel for transporting the oil from Milton to Philadelphia. As the railroad company's proportion of the rate from Olean to Philadelphia would, under the first contract, be 20 cents, the railroad company would therefore receive 12 cents on oil thus transported by the National Transit Company for it from Milton to Philadelphia, without performing any service whatever.

The condition of all this, provided by the fourth subdivision of the first contract, was that the rates of the Pennsylvania Railroad on oil were to be fixed by the railroad "*subject to the advice and concurrence of the Transit Company.*"

This contract might be terminated after August 1, 1889, on ninety days' notice. As a matter of fact it was not terminated until 1905, and business was actually transacted under it for nearly ten years. (Justice, vol. 3, p. 1491; Archbold, vol. 17, pp. 3444, 3445.)

It will be shown later that the pipe lines can transport oil at a very low cost, unquestionably far below the cost of railroad transportation. Consequently, the Standard Oil Company could have but one motive in making a pooling agreement with the Pennsylvania Railroad and guaranteeing to that railroad a large proportion of the business, or at least the profit thereon, at a time when it had pipe lines by which

it could transport all of the oil to the seaboard itself. The motive was evidently to induce the railroad company to fix its rates at the will of the Standard, and to keep them high, so as to prevent the independent oil from being transported to the seaboard in competition with the Standard. It was for this reason that the Standard allowed the Pennsylvania 12 cents a barrel on a large quantity of oil without any service of transportation being performed by the Pennsylvania.

Mr. Archbold, in his testimony before the Committee on Manufactures, in March, 1888, said in substance that this contract removed all possible inducement for the Pennsylvania to reduce the rate for transportation of oil. He testified as follows:

> Q. Since that agreement was made the rates of oil upon your pipe line and upon the Pennsylvania Railroad have been identical, have they not?—A. I think they have.
>
> Q. There is now no earthly reason whatever to have any competition between your line and the railroad in consequence of the fact that you have an agreement that divides the business on a pro rata or proportion?—A. I do not see any reason.
>
> Q. In other words, under your contract with the Pennsylvania Railroad, which guarantees to them 26 per cent of the oil, if they should attempt to compete with you, and reduce the price, they would not, under your agreement, be entitled to any more than 26 per cent of the business?—A. No, sir.
>
> Q. Therefore every reduction of price that they would make, so long as they maintained the agreement with you, would be an injury to their treasury by taking that much money out of it?—A. I should think it would.
>
> Q. They have therefore now no longer, assuming the maintenance of the agreement of which you have spoken, any inducement to decrease rates for the purpose of increasing their business?—A. They have not.
>
> (Archbold, vol. 6, p. 3253.)

Mr. Archbold admitted, in the present case, that ever since 1884 the Pennsylvania's rates on oil to the seaboard have remained substantially unchanged (vol. 17, p. 3445), and those rates, as the contract provided, were fixed with "the advice and concurrence" of the Standard.

REFUSAL OF THE STANDARD'S PIPE LINES TO ACT AS COMMON CARRIERS.

The Standard Oil Company, having secured substantially a monopoly of the pipe-line business in the United States, has, in general, refused to transport oil for others as a common carrier through those pipe lines, and, to the limited extent to which it has acted as a common carrier, has charged prohibitive rates, several times in excess of the cost of transportation plus a reasonable profit. The result is, that the Standard Oil Company has practically the sole advantage from the use of this great pipe line system, the cost of transportation through which is very much less than the cost of railroad transportation, which most of the independent refiners have to pay. The control of pipe lines has been, thus, one of the strongest agencies possessed by the Standard for maintaining its monopoly of the purchase of crude oil and of the refining and sale of the products thereof.

The defendants admit that pipe lines in the States of Ohio, Pennsylvania, West Virginia, and New York are common carriers under the laws of said States; but it does not appear that they have actually transported oil for others to any appreciable extent. The Hepburn Act of 1906 provides that pipe lines doing an interstate business shall be held and considered to be common carriers, and requires them to file their tariffs with the Interstate Commerce Commission. The Standard has practically evaded the law and rendered it nugatory: several of its pipe lines have failed and refused to file tariffs at all; and the tariffs filed by other of its pipe lines apply only to points where no independent shipper can use them, and contain provisions with which it is impossible for any independent shipper to comply.

FAILURE TO ACT AS COMMON CARRIERS PRIOR TO HEPBURN ACT.

Mr. Archbold testified on cross-examination that the laws of several States compel certain of the Standard's pipe lines to operate as common carriers, and he says they are so operated, and have been so operated at least since 1888. He admitted, however, that as a matter of fact, the action of the Standard's pipe lines as common carriers "has very little

practical significance." It seems apparent from the rest of the answer in which this statement was made and from his preceding testimony that Mr. Archbold intended it to apply to the entire pipe-line system, meaning that in no case had the action of the pipe lines as common carriers been of practical significance. His counsel, Mr. Milburn, broke in at this point, saying, "That is the trunk lines you are speaking of?" whereupon Mr. Archbold said that it was the trunk lines he was speaking of. He said further, however, that, although certain trunk lines are common carriers, he does not recall that they ever transported oil for others to the seaboard, although he says there may have been some so transported to Philadelphia (Archbold, vol. 17, pp. 3432, 3433).

EVASION OF THE FEDERAL LAW BY THE TRANSFER OF THE OWNERSHIP OF THE PIPE LINES IN NEW JERSEY AND MARYLAND AND THE CONSTRUCTION OF DELIVERY STATIONS AT INACCESSIBLE POINTS ON THE STATE LINES.

The Hepburn Act of 1906 made the interstate commerce act applicable to pipe lines engaged in interstate business. This act was passed and approved June 29, 1906, and took effect sixty days later, August 28, 1906. We shall show that the Standard Oil Company has substantially failed and refused to conform to the terms of that act, and that its pretended compliance therewith is a mere farce.

The most important point which the shipper of crude oil is likely to wish to reach is New York Harbor, which is the great center for the exportation of oil products, as well as for distribution to the populous eastern section of the country. More than one-third of the crude oil consumed by the Standard refineries is at New York Harbor. Baltimore is another advantageous center for refining, for similar reasons. The Standard Oil Company has evaded the obligation of the Hepburn Act, and has failed to file tariffs or to transport oil for others to New York Harbor or to Baltimore. The manner in which this was done is significant.

Prior to November 1, 1905, for many years the New York Transit Company (a corporation of New York, the laws of which State[a] have since 1878 impressed pipe lines with the

[a] Laws of 1878, ch. 34; Cumming & Gilbert's Gen. Laws of N. Y., 1901, vol. 3, p. 4221, secs. 42 and 50.

character of common carriers) had owned a pipe line from western New York across the State of New York, reaching the New Jersey State line at Unionville, N. Y., thence across the State of New Jersey to Bayonne, N. J., and to the middle of the Hudson River on the way to Brooklyn, N. Y., the remainder of the line from the middle of the Hudson River to Brooklyn being owned by the Standard Oil Company of New York, but operated by the New York Transit Company; so that the New York Transit Company for many years operated an interstate line from Olean, N. Y., across the State of New Jersey to Bayonne, and to Brooklyn, N. Y.

During the same time and prior to November 1, 1905, the National Transit Company (a corporation of Pennsylvania, the laws of which State[a] have since 1883 impressed oil pipe lines with the character of common carriers) owned and operated a line of pipe from western Pennsylvania to Bayonne, N. J., entering the State of New Jersey at Centerbridge, Pa., on the Delaware River. The National Transit Company, also during the same time and prior to 1905, owned and operated a branch from Millway, Pa. (a junction with the line previously mentioned and also with the Southern pipe line, owned by the Standard Oil Company), extending south across the Pennsylvania-Maryland state line at Fawn Grove and running to Baltimore.

Prior to November 1, 1905, these crossings, to wit, Unionville, N. Y., on the line between New York and New Jersey, Centerbridge, Pa., on the line between New Jersey and Pennsylvania, and Fawn Grove, Pa., on the line between Pennsylvania and Maryland, were (as they are now) unimportant villages, with no industries, and during all of these years they never had a delivery tank or a pumping station. The pipes simply crossed there in interstate transportation, with absolutely nothing to distinguish them as being upon the state line.

The proposal in Congress to subject pipe lines to the provisions of the interstate commerce act was under discussion in 1905, and in anticipation of such an enactment the defendants caused the New York Transit Company to convey to the Standard Oil Company of New Jersey the line from

[a] Act of June 2, 1883; Pepper & Lewis' Digest, 1896, vol. 2, pp. 3486 et seq.; Jones v. Tanner, 27 Pittsb. L. J. 79.

Unionville, N. Y., to Bayonne, N. J., and to the center of the Hudson River on the way to Brooklyn, and caused the National Transit Company to convey to the same New Jersey company the lines from Centerbridge, Pa., to Bayonne, N. J., and from Fawn Grove, Pa., to Baltimore, Md. (Payne, vol. 1, pp. 330, 331; Chesebro, vol. 1, p. 394.)

After the passage of the Hepburn Act (June 29, 1906) and in order to evade its provisions the New York Transit Company constructed a tank for the delivery of oil at Unionville, N. Y., sometime between July and October (Payne, vol. 1, p. 334); and the National Transit Company constructed a like tank at Centerbridge, Pa., and one at Fawn Grove, Pa. The New Jersey company then built a pumping station at these places, and has since pumped the oil from these tanks through the old pipes to the seaboard using practically the same facilities and in the same manner as the former companies had done, which former companies as we have shown had been and still are common carriers.

The Standard pipe line companies (the New York Transit Company, the National Transit Company, and their western connections) proceeded to file tariffs, under the act of Congress, naming these stations—Unionville, Centerbridge, and Fawn Grove—as delivery points to which they would carry and deliver oil under these tariffs. (See list of all pipe line tariffs filed, Petitioner's Exhibit 39.) They did not make any tariffs across the States of New Jersey or Maryland to New York Harbor or to Baltimore, and they have refused to treat the lines across the States of New Jersey and Maryland to the seaboard as subject to the law of Congress, or as common carriers.

It appeared by the testimony that there were no industries at any of these places on the state lines, absolutely no means of delivering oil to anybody, and no facilities for taking oil away from these points except the pipe lines of the Standard of New Jersey; and that these tanks were simply used for the oil owned by the Standard, the oil from the New York Transit and National Transit lines going into the tanks and being pumped out by the Standard of New Jersey and transported to New York Harbor or Baltimore exactly in the same manner as before. Mr. Payne admitted that no oil had ever been transported to any of these three places under the tariffs,

or ever could be, except such as was transported through the Standard's pipes to New York Harbor or to Baltimore. (Vol. 1, pp. 335, 339, 340.)

In fact, these new so-called delivery points at Unionville, Centerbridge, and Fawn Grove are used simply like other intermediate pumping stations of the through pipe lines. It appears that at reasonable distances, varying from 25 to 60 miles, depending upon the topography of the country and other conditions, pumping stations are established on all trunk pipe lines; that these pumping stations have tanks connected with them into which the oil runs and from which it is pumped into the next section of the pipe.

Prior to the establishment of these stations on the state line there were no pumping stations at these points, and none were needed in the ordinary transportation of the oil to the seaboard; that these stations were established at Unionville, Fawn Grove, and Centerbridge solely for the purpose of evading the law and were not necessary in the ordinary transportation of the oil. We invite the court's attention to all of Mr. Payne's testimony on this subject. (Vol. 1, p. 332, et seq.)

Being urged to give a reason for the construction of these new pumping stations, Mr. Payne said that he did not know unless there was some legal reason, whereupon Mr. Milburn, counsel for the Standard Oil Company, volunteered the information that it was done under his advice, and that they built these stations because they were compelled to. (Vol. 1, p. 341.) On cross-examination of Mr. Payne, Mr. Milburn undertook to show that they built these tanks in order that they might be in position to deliver oil at the termini of their pipe lines in compliance with the law requiring them to be common carriers; but he did not explain why they just previously sold the lines in New Jersey and Maryland to the Standard Oil Company of New Jersey (which company owned all the stock of these pipe-line companies), thus changing their termini from New York Harbor and Baltimore to these useless interior points.

The theory undoubtedly was that the companies organized under the laws of Pennsylvania and New York were by their charters and the law of the State of their creation required to act as common carriers, and therefore when they entered

the States of New Jersey and Maryland, whose statutes did not contain this specific requirement, that they would still be compelled to act as common carriers. It was evidently in the hope of evading this that they conveyed the lines to a corporation of New Jersey.

This scheme of evading the act of Congress was a silly attempt to evade a public obligation under the guise of a fictitious compliance with the law, and is another instance of the utter contempt and disregard of the laws of the country and of the rights of competitors that the Standard Oil Company has always exhibited in its efforts to maintain its monopoly of the oil business.

It will appear that a reasonable rate for transporting oil by pipe line is very much less than the railway rates, and the importance of closing the gateway to the New York Harbor and Baltimore is perfectly apparent. Of the total oil refined in the United States about 60 per cent is refined at the seaboard. The oil refined at the New York Harbor can be conveniently transported to supply the most densely populated district of the United States, as well as furnish the export trade, which takes about 55 per cent of the refined oil produced in the United States. There is only one independent pipe line reaching the Atlantic seaboard at all (not counting the pipe lines to the Gulf of Mexico), and that reaches the Delaware River at Marcus Hook. It was, therefore, the greatest aid in giving the Standard a monopoly of the business, to control the transportation and prevent independent shipments of oil by pipe line to New York Harbor and Baltimore.

When we come to consider the rates and conditions imposed by the Standard pipe lines in their tariffs we shall see, moreover, that, though rates to Philadelphia are filed, shipments under them are practically impossible.

GENERAL SEGREGATION OF PIPE LINE OWNERSHIP AT STATE LINES.

It further appears that, since about November, 1905, the Standard has carried to practical completion a policy, previously pursued to some extent, of segregating the ownership of its pipe lines among its subsidiary companies in such a

way that no company shall own or operate pipes outside the State of its incorporation. This policy is apparently designed to aid the Standard in evading requirements of law regarding interstate transportation. At the present time the Buckeye Pipe Line Company owns the Standard lines in Ohio (except those of the secretly controlled Manhattan Oil Company); the New York Transit Company, the lines in New York; the Crescent, National Transit, South West Pennsylvania, Southern, and Northern companies, the lines in Pennsylvania; the Standard Oil Company of New Jersey, the lines in New Jersey and Maryland; the Eureka Pipe Line Company, the lines in West Virginia; the Cumberland, the lines in Kentucky; the Indiana Pipe Line Company and Ohio Oil Company, the lines in Indiana and Illinois.

The only companies, therefore, which own any lines outside of the States where they are incorporated, are the Standard Oil Company of New Jersey, owning lines in Maryland and New Jersey, and the Ohio Oil Company, owning lines in Indiana and Illinois. The Ohio Oil Company is a corporation of Ohio, the laws of which State have since 1868 impressed all oil transportation companies with the character of common carriers. (Act of April 25, 1868; Bates Anno. Ohio Stats., 1906, vol. 2, sec. 3878.)

The division between the National Transit and the New York Transit in western New York was formerly at Olean, N. Y., but since 1905 it has been at the state line. (Vol. 1, p. 329.) The Standard Oil Company, about the time of the passage of the Hepburn Act, also built stations on the Ohio River, along the southern line of the State of Ohio at the points of junction between the lines of the Buckeye Pipe Line Company and the Eureka Pipe Line Company. Presumably this was for the same purpose as the construction of the pumping stations at Unionville, Centerbridge, and Fawn Grove. (Payne, vol. 1, p. 374.)

The laws of West Virginia,—under which the Eureka Pipe Line Company is organized,—also require pipe lines to act as common carriers. (Acts of 1879, ch. 27; Acts of 1891, chs. 44, 113; Code of 1899, pp. 543, 544, 1094; Code of 1906, sec. 2229; West Virginia Transportation Co. v. Ohio River Pipe Line Co., 22 W. Va. 600.)

Texas also has similar statutes. (Acts of 1899, p. 202; Supp. to Sayles' Texas Civil Stats., 1897 to 1906, p. 104, ch. 15-A, secs. 4 and 6.)

The Prairie Oil and Gas Company is a corporation of Kansas, the laws of which State impress the character of common carrier upon all pipe lines built or maintained for the conveyance of crude oil within the state. (Laws of 1905, ch. 315, secs. 1, 2.) This company owns the lines from Oklahoma and Kansas through Missouri and Illinois to Griffith, Ind. The States of Oklahoma and Indiana have constitutional and statutory provisions requiring pipe lines to act as common carriers. (Const. of Ok., art. 9, secs. 4, 31; Laws of Ind., 1891, p. 301; Burns' Anno. Ind. Stats., 1901, sec. 5120.) Missouri and Illinois have no such statutory provisions. There is no evidence that this company has transported any other than its own oil. It appears, however, that the line of this company was to a very considerable extent constructed upon the rights of way of railroads, thereby making use of property which had been taken under eminent domain laws.

The Hepburn bill was passed June 29, 1906, and took effect August 29, 1906. The provision of the act applicable to pipe lines is as follows:

> Sec. 1. That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act.

It may be claimed that this act simply applies to pipe lines which were at the time of its passage common carriers in interstate commerce, but that can hardly be the meaning of the act, because the evident object was to compel all pipe lines to act as common carriers in interstate commerce and to make them subject to the Interstate Commerce Commission. It says they "shall be considered and held to be common carriers." Were they already common carriers and so acting, this provision would seem to be of no effect. Furthermore, all of the lines of the Standard Oil companies are actually common carriers in interstate commerce.

It appears that prior to August, 1906 (the month the Hepburn bill took effect), the Standard Oil Company of New York had been the purchasing agent for crude oil in the various fields and was the shipper thereof through various pipe lines owned by separate companies; that the Standard of New York sold crude oil to the various refineries owned by the separate corporations of the combination; that the oil was gathered in the fields by the gathering lines, transported to the trunk lines, and by the trunk lines transported continuously through various pipes of the different connecting companies; that in August, 1906, the Standard Oil Company of New York ceased to be the purchasing company and the Standard Oil Company of New Jersey became such purchasing company, and also, as we have seen, acquired the lines in New Jersey and Maryland. This evidently was intended to place the ownership of the pipe lines in those states in the hands of the company purchasing and transporting the oil, so as to evade the appearance of transporting any oil for anyone but the owner of the lines and to evade the provisions requiring them to act as common carriers. But for years the various pipe lines of the Standard combinations had regularly transported oil in interstate commerce for companies other than those owning the pipe lines—namely for other companies in the Standard combination—and it appears that during the early days the Standard pipe lines transported oil for outsiders also and delivered it on what were known as pipe-line certificates.

We believe that the pipe lines located in Maryland and New Jersey, now owned by the Standard of New Jersey, have exactly the same status of common carriers that they had when the title thereto was in the New York Transit Company and National Transit Company, which latter companies are conceded to have been and still are common carriers. It is probably unnecessary in this case to decide whether they are or not, or whether the Prairie Oil & Gas Company is under any duty to transport oil for others. The Standard's practical evasion of, or refusal properly to comply with, the Hepburn law, by the crafty means here shown, point convincingly to the object and purpose of the Standard to maintain its monopoly of the oil business, even to the extent of resorting to illegal or doubtfully-legal means.

FAILURE TO COMPLY WITH THE LAW REQUIRING TARIFFS TO BE FILED AND FILING TARIFFS UNDER WHICH INDEPENDENTS COULD NOT SHIP OIL.

On or about August 27, 1906, and between that and the month of October, certain of the pipe line companies of the Standard Oil Company filed tariffs with the Interstate Commerce Commission naming rates for the transportation of oil between certain points on their respective lines. By agreement of counsel a schedule of the tariffs was introduced in evidence in lieu of the originals. (Crossland, vol. 1, pp. 307, 308; Petitioner's Exhibit 39.)

It appears, however, that with the exception of the city of Philadelphia and Marcus Hook, near Philadelphia, not one of these tariffs named a place where an independent refinery is situated, and we believe the testimony shows conclusively that under these tariffs not a barrel of oil could be transported by an independent company. Furthermore, the minimum amount of oil to be transported in any one batch or shipment is so large that no independent manufacturer could use them and the rates are so high as to be prohibitive.

Mr. Payne testified that there were independent refineries at various places—for instance, Toledo, Ohio; Titusville, Coraopolis, Warren, and Bradford, Pa.—but that the tariffs did not name rates to any of these places. The Standard actually has pipe lines to most of these points, and Mr. Payne said they did have tariffs, but they were not filed. Of course they were not; it was not intended that these filed tariffs should apply to any place where there was an independent company which could use or ship oil. The unfiled tariffs are for application to oil owned by the Standard itself, or to oil which it may voluntarily transport for others (if any). Had they filed tariffs, naming rates to these independent manufacturing points, the independents could have forced the pipe lines to transport oil to their refineries and could also have complained to the Interstate Commerce Commission about the regulations and the excessive rates, and that is the reason undoubtedly why the Standard refused to file a tariff which could be used by any independent. Mr. Payne thought that the tariff filed to Philadelphia and Marcus Hook might be used by some independent company, but he ad-

mitted that the only refineries there were connected with the United States Pipe Line or had other sources of supply. (Vol. 1, pp. 352–355.)

It appears from the schedule of tariffs (Petitioner's Exhibit 39) that the Standard Oil Company of New Jersey, owning the pipe lines in New Jersey and Maryland, the only pipe lines reaching New York Harbor or Baltimore, has filed no tariff; that the Ohio Oil Company, owning a large pipe line in Illinois and Indiana, the only trunk pipe line reaching the Illinois field, has filed no tariff; that the Prairie Oil and Gas Company, owning the Standard lines in the Oklahoma and Kansas oil fields and the only trunk pipe line extending from these fields eastward, has filed no tariffs. So that the independents are shut out from the use of the Standard's pipe lines to secure the cheap crude of the Mid-Continent and Illinois fields, are practically shut out from the Atlantic seaboard, and in fact there are practically no tariffs which name rates to points where they could use the oil.

RESTRICTIONS ON THE SHIPMENT OF OIL UNDER THE TARIFFS FILED.

Even, however, if there were independent refineries at the points to which the Standard pipe lines have filed tariffs, those tariffs would still be of little or no service to the independent refiners and other independent shippers. This is partly due to the restrictions which the tariffs place upon the shipments of oil, but more to the fact that the rates named in the tariffs are practically the same as the railroad rates, and are so high as to be prohibitive, being far in excess of the actual cost of transportation, which represents, of course, all that the Standard itself really has to pay for the use of these same lines.

An examination of the schedule of tariffs (Petitioner's Exhibit 39) will show that they provide a minimum quantity which will be acceptable as a shipment, this quantity being in most cases either 75,000 barrels or 300,000 barrels, the minimum of 300,000 being applied where the shipments are for a greater distance. We quote the following language imposing such a restriction from one of the tariffs, the

language in the other tariffs being substantially similar (Petitioner's Exhibit 43):

> It will forward such crude petroleum when there has been tendered to it by the shipper, individually, or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than 75,000 barrels, all of which shall be consigned for delivery to the same delivery point. * * * Orders for the shipment of any specified kind of such petroleum shall only become effective when orders from the shippers, in connection with orders from other shippers, for the same kind and quality of petroleum, shall amount in the aggregate to 75,000 barrels or more.

There are very few independent refineries in the United States which handle as much as 300,000 barrels of crude oil in an entire year, and many of them do not handle more than 75,000 barrels a year. It is evident, therefore, that except so far as an independent refiner can combine his shipments with those of others he can make little use of these tariffs on account of the prescribed quantity. Mr. Archbold, of the Standard Oil Company, however, asserted that an independent refiner or shipper who had a smaller quantity of oil could have it transported at the same time with oil belonging to the Standard Oil Company if the total amounted to the quantity specified in the tariffs. If this interpretation is correct, these restrictions would not be quite so serious in their effect; but since the amount specified must all be consigned to one delivery point, and since most independent refineries are not at points where the Standard has refineries, this possibility would not greatly affect the situation.

IT IS ENTIRELY PRACTICABLE FOR PIPE LINES TO ACT AS COMMON CARRIERS.

In order, if possible, to excuse their action in practically refusing to transport oil for others through their pipe lines, and to act as common carriers in accordance with the law, the defendants have put in a large amount of testimony apparently seeking to show that, under present conditions of the oil industry, it is practically a physical impossibility for the pipe lines to act as common carriers. We believe that the statements of these witnesses themselves and the exhibits they have put in evidence, as well as the testimony of wit-

nesses introduced by the Government, show clearly that it is practicable for the pipe lines to act as common carriers, under reasonable regulations and with a reasonable adjustment of their facilities for that purpose.

We do not, of course, contend that a pipe line can act as a common carrier in the same way a railroad does. The oil in the pipe line is not in separate packages or separate vehicles, but occupies the line itself, and each part of the oil is pushed on its journey by succeeding oil. It is undoubtedly a physical impossibility for a pipe line to take a small quantity of oil belonging to a given shipper and deliver to him that identical oil at the other end of a long line, without altogether prohibitive expense. None of the witnesses for the Government or for the defendants, however, have discussed this question on the assumption that there was any proposal that the oil of the individual shipper should be kept separate from that of every other shipper and the same oil actually delivered to him. The actual practice of the pipe lines, so far as they have acted as common carriers, and the practice which would obviously always be pursued, would be to deliver to the shipper an equivalent quantity of oil, rather than the identical oil which he shipped—just as public warehouses do with the grain delivered to them.

The defendants, however, take the position that, under modern conditions, the variations in the grades of oil handled by the pipe lines introduce a new difficulty which did not exist where all the oil was substantially of the same quality. That there is a mixture of the different grades in the line so that it is impossible to deliver to the shipper the same grade of oil as he ships, and that consequently it is essential that all the oil shall be the property of one owner who gains by the improvement of the lower grade oils from such mixture all or part of what he loses by the deterioration of the high grade oils.

It is undoubtedly true that there is a considerable difference as between the oils of the several great oil fields in both quality and value. The oil from the Appalachian field is more valuable than that from any of the other fields. The oil from the Lima-Indiana field contains sulphur, which is not present in appreciable quantities in the Pennsylvania oil, and the mixture of the Lima with the Pennsylvania oil

deteriorates the latter. The Illinois and Mid-Continent oils also differ somewhat from the Lima-Indiana oils and from one another. Moreover, it appears from the testimony that there are some differences in the quality of oil produced in different parts of a single oil field, but for the most part a uniform price is paid for all the oil of a given field.

It is further true that, to a considerable extent, the great trunk pipe lines are used to transport these different kinds of oil, one after another.

There is undoubtedly some little admixture of different grades of oil when they follow one another through a pipe line, but we believe the testimony shows clearly that the amount of such admixture is, if proper care is taken and if reasonably large quantities are shipped, relatively so small as not to be of commercial significance. We believe further that the evidence shows that the Standard Oil Company has so many different pipe lines, and in some of the pipe lines so many different pipes, that it is possible for it to specialize the use of particular pipe lines, or groups of pipes in a pipe-line system, for the transportation of a particular kind of oi for such long periods of time as to reduce the effect of admixture to practically nothing, and that where the pipe lines are not already actually adapted for such specialization, a comparatively small expense of readjustment would adapt them fully to it. In fact, as we shall show, no witness introduced by the defendants specifically stated that it was not commercially practicable for pipe lines to transport oil of different grades as common carriers; and while much of their testimony was evidently intended to leave that impression with the court, the absence of such specific testimony is extremely significant.

In the first place, we would call the attention of the court to the testimony of several witnesses on behalf of the Government, showing that independent pipe lines actually do handle oils of different grades through the same pipe lines without sufficient admixture to cause injury. Mr. Tarbell, the general manager of the United States Pipe Line, the only competitor of the Standard in trunk pipe line transportation to the Atlantic seaboard, and Mr. Martin, the superintendent of that pipe line, both testified to that effect with respect to the business of the United States Pipe Line (Martin, vol. 20,

pp. 285–298; Tarbell, vol. 20, pp. 298–302). It appears from their testimony that the United States Pipe Line is about 380 miles long; that it consists of one line for refined oil and one line for crude oil; that it has always acted as a common carrier of both crude and refined oil, and transports oil of different grades through the same pipe, although, of course, refined oil is not pumped through the crude pipe line or vice versa. The refined-oil line handles two wholly different grades of refined oil, one known as "Water White," which is of a pure white color, and the other known as "export oil," which is of a yellowish color. Both these witnesses assert that they ship these two grades of oil one after the other, usually in batches of from 30,000 to 60,000 barrels, but sometimes in batches as small as 5,000 barrels; that they are transported from 195 to 382 miles; that in that distance they are handled by several pumping stations, but that they do not mix to any appreciable extent.

They further testified that the pipe line, through its crude-oil pipe, constantly handles different grades of Pennsylvania crude oil for different owners, in batches ranging from 5,000 to 25,000 barrels, and that here also the mixture is not sufficient to be commercially significant. In December, 1908, Mr. Martin made a special test of the crude-oil line, in order to determine the amount of mixture. The test covered the transportation of a batch of about 3,500 barrels of oil for the Columbia Pipe Line Company. This oil was of 41.5° gravity (Baumé test), but was preceded by Pennsylvania oil of another grade which averaged 44.5° gravity and was followed by the same grade. At the end of the first section of the pipe line, a distance of 65 miles from the point of origin of the oil, it was pumped into a tank and pumped out again into the next section, a distance of 63 miles, and the same thing was then done for a third section covering a distance of 64 miles. This amounted to practically three different tests as to the extent of mixture. In the first test the amount of mixed oil was 8 barrels; in the second, 7 barrels; and in the third, 15 barrels. These quantities are so small as to be of no appreciable significance in comparison with the total quantity. But the greatest importance of the testimony of these witnesses is their distinct statement that the United States Pipe Line has always been used as a common carrier

of oils of different grades in its ordinary business with entire commercial success.

Mr. W. F. Messner, an officer of the Cornplanter Refining Company, which has a refinery at Warren, Pa., together with a small pipe line about 20 miles in length, testified that it constantly pipes oil of different grades, one following the other, through this pipe line, with mixture of no importance. He also confirmed the testimony of Messrs. Tarbell and Martin as to the commercial success of the operation of the United States Pipe Line as a common carrier in the transportation of refined oil, with which he is familiar through having made shipments from the Cornplanter refinery. (Vol. 20, 259–263.)

Again, Mr. Blackman, who is the superintendent of the refinery of The Texas Company at Port Arthur, Tex., testified (vol. 20, pp. 477–481) that The Texas Company owns an 8-inch line from Oklahoma to Dallas, a 6-inch line from Dallas to Humble and Garrison, Tex., and 6-inch lines to Port Natchez and Port Arthur; that it transports Oklahoma oil to Dallas, where it is run through a refinery and a light distillate, averaging about 49° in gravity, is taken off; that from Dallas to Port Arthur, a distance of about 300 miles, they transport through the same pipe line alternately this light distillate and crude oil from the Oklahoma field, which has a gravity of about 32° to 34° (or possibly the heavy fuel oil, the testimony not being clear as to whether the crude oil or the fuel oil is transported, or both). The way this is done is by putting 200 or 300 barrels of water between the low gravity and the high gravity oil. This water prevents any mixture whatever, and it is entirely practicable and is done continuously in the business of The Texas Company. It appears further that a light distillate of 49° gravity would tend to mix more readily with a heavy crude or fuel oil than would two oils of the same or more nearly the same gravity. Mr. Blackman testified specifically that it was entirely practicable to follow one grade of crude oil with another grade through the same pipe line without mixing to any appreciable extent. He testified further that from Port Arthur to the steamships, a short distance, and from Port Natchez to Port Arthur, a somewhat longer distance, refined products of petroleum, of different grades, are pumped through the same pipe line in the same manner.

The Texas Company is perhaps the largest oil company in the United States outside of the Standard Oil Company, and this testimony is of great significance. (Vol. 20, pp. 477–481.) It appears further from the testimony that The Texas Company has filed tariffs as a common carrier in compliance with the act of Congress, and that the Gulf Refining Company, which also has a line extending from Oklahoma to Port Arthur, has done the same. We have, therefore, all of the principal independent pipe lines complying fully with the act of Congress, and one of them had for years previously also acted as a common carrier. This evidence demonstrates beyond question that it is entirely practicable to transport different grades of oil through the same pipes without any material mixture where reasonable care is taken.

Not only do these independent pipe lines transport oil of different grades through the same pipes, but the Standard does the same regularly through its pipe-line system, although on account of the large number of pipe lines and pipes which it has it often is able to avoid changing from one grade of oil to another in the same pipe for a long period of time. As we have already stated, no one of the Standard officials testified specifically that it was not entirely practicable for pipe lines to transport oil of different grades as common carriers. The only witnesses who testified on this subject were pipe-line engineers and officials of the pipe-line companies, and all they did was to show that there was a certain amount of admixture where oil of one kind follows oil of another through the same pipe line; but none of them knew whether this admixture was of commercial importance or not. It is a significant fact that none of the refining experts of the Standard Oil Company, who would know what actual effect on the value of the oil from a refining and commercial standpoint resulted from such a mixture, was asked to give any evidence on that subject. We believe that all the elaborate evidence which the defendants put in tending to show that there was some mixture is unimportant in the absence of clear and definite proof that the mixture is of commercial significance. Moreover, the testimony regarding this mixture itself is contradictory and inconclusive. It is a natural conclusion that if it were not commercially practicable to transport oil of different grades through the

same pipes, and if the contamination were such as to be of commercial significance, the experienced officials of the Standard Oil Company would have found it out and testified to it.

The witnesses on this subject, called by the defendants, among other things, testified to two classes of tests which they had made with a view to determining the amount of admixture. All of these tests were made after the time the defendants began their testimony in this case and were for the purposes of this case. One of these sets of tests was made with a single pipe for a limited distance, the oil not passing through loops or through an additional set of pumps or tanks. The other set of tests covered long-distance transportation through a complex pipe-line system.

The results of the first of these sets of tests were testified to by Mr. Page, a civil engineer in the employ of the Standard pipe lines (vol. 16, pp. 2920 et seq.), by Mr. Weymouth, his assistant (vol. 16, pp. 2975–2976), and by Professor Schoder, an assistant professor and in charge of the hydraulic laboratory at Cornell University (vol. 16, pp. 3024–3052), all of whom participated in making the test. The Government was not invited to participate. They testified, in substance, that the principal cause of the mixture taking place between two different grades of oil following one another through a single pipe is the fact that any fluid moving through a pipe moves more rapidly in the center than at the outer edge, owing to the friction at the outer edge against the surface of the pipe. They introduced diagrams showing the results of tests as to the relative speed of oil at the center and at the outside of a pipe. These diagrams, however, prove nothing, for they show clearly that, if all the particles of oil moved constantly in a direct line without a whirling motion, there would be an enormously greater amount of mixture than actually does take place. These witnesses admitted, on cross-examination, that as the oil is forced through the pipe a whirling motion is developed which throws the particles from the outside to the center and from the center to the outside, thereby greatly reducing the effect of this difference in speed and preventing mixture.

The only tests of any value are those which show the actual amount of mixture. The results of three tests of this

character, made in a single pipe, on oil which had moved for a distance of either 16 or 24 miles were described by these witnesses. The record of these tests, in the form of diagrams (Defendants' Exhibits 242, 243, and 244), shows the length of time required to change from oil of one gravity to oil of another, from which the quantity of mixed oil is computed. These witnesses undertook to show that a very considerable length of time elapsed, so that the quantity of oil which was actually mixed was large, claiming in the case of one of the tests, for example, that about 8½ per cent of the total quantity of oil which had passed through the pipe up to this point was mixed. The least examination of these diagrams, however, will show that, particularly in the case of two of the tests, the change practically all took place within a very few minutes, and that during the remainder of the time in which there was some variation in the gravity of the oil, this variation was a mere fraction of a degree, which none of the witnesses for the defendants contended to be of any commercial significance. Two of the tests show that the quantity of oil affected to the extent of more than a fraction of a degree was not over 2 per cent, instead of 8½ per cent. In the case of the other test, where the mixture was somewhat greater, it appears that the weather was very cold, tending to make the oil move sluggishly and increase the mixture.

It is a striking commentary on the value of this so-called expert testimony that Professor Schoder attempted, on the basis of these experimental tests, to account for the amount of mixture claimed to have taken place in actual commercial transportation over a much longer distance through the complex Southern Pipe Line, as reported by another witness, Mr. Vandergrift. Professor Schoder assumed that 8½ per cent of the contents of the Southern Pipe Line would become contaminated, because of his theoretical tests, which show 8½ per cent contaminated, including all which was contaminated in the slightest degree. He contended that, by applying this 8½ per cent to the shipments through the Southern Pipe Line and taking account of certain other complicating conditions, the amount of mixture would turn out to be substantially the same as actually took place according to Mr. Vandergrift's tests. But, since, as a matter of fact, the amount of oil which, under Professor Schoder's test, was con-

taminated to any *decided* degree was not 8½ per cent, but only 2 per cent, there can be no such computation therefrom to correspond with the reported mixture in the tests on the Southern Pipe Line, since in the tests on the Southern Pipe Line only a *decided* variation in the gravity was treated as representing admixture, and not slight variations.

If, therefore, we accept the tests of Messrs. Page, Weymouth, and Schoder for themselves, it appears that the amount of mixture of even the slightest commercial significance in a single pipe does not exceed 2 per cent of the contents of the pipe from the point of origin to the point of destination, and that if a batch of oil of just sufficient quantity is pumped through a pipe to fill its entire length, the contamination of that batch of oil would not exceed 2 per cent, while, if a still larger quantity of oil is pumped, the proportion of contamination would correspondingly decrease. It is obvious, of course, that the contamination takes place only at the junction of the two kinds of oil, and is no greater in absolute amount when 100,000 or 1,000,000 barrels of oil of a given grade are pumped in a continuous stream than when a few thousands only are pumped.

Mr. Page and Professor Schoder, however, testified that there were other conditions in pipe-line operation which tended to cause admixture in addition to that which takes place in a single pipe under perfect conditions. The principal additional cause to which they referred arises from the practice, so called, of looping the pipe lines. It appears that, in order to equalize the pressure, reduce friction, and expedite the transportation of the oil, it is the custom for certain distances, such as where a hill is to be surmounted, to pass the oil from a single pipe to two or more pipes, which later unite again. In fact, in some of the pipe lines of the Standard Oil Company there are at least three different pipes side by side for the entire distance, and a larger number at intervals for part of the distance. It further appears that in some cases where pipes are thus looped the oil passes into parallel pipes of differing size; for instance, it may pass from a single 8-inch pipe to an 8-inch pipe and a 6-inch pipe lying side by side. Oil under a given pressure will move faster through the larger than through the smaller pipe, and the result is, as testified to by these witnesses, that a column of oil of

one grade following oil of a different grade will reach the end of the larger pipe sooner than it does the end of the smaller pipe, so that there is an interval of time during which one of the pipes is running one kind of oil into the tanks or pipe beyond, and the other pipe running another kind.

We shall show later that this difficulty can largely be avoided with reasonable care, and possibly some little additional expense. We mention the matter at this point because in the Southern Pipe Line, on which the other set of tests referred to were made, there are several instances of such looping with different sizes of pipes. In fact, this Southern Pipe Line, as appears clearly from the diagrams introduced by the Government showing the length and size of the pipes in each section of the various Standard pipe lines (see Petitioner's Exhibits 990 and 991), is the most complex of all the Standard pipe lines, and doubtless that is the reason why it was selected by the defendants for making these tests, because the mixture would be greater in such a complex system than in the other systems operated by the Standard Oil Company, as is admitted by Mr. Vandergrift (vol. 16, p. 3002).

Mr. Vandergrift, superintendent of the Southern Pipe Line Company, testified to the results of these so-called tests of actual operation on that line. (Vol. 16, pp. 2977–3020.) They covered the transportation of four or five batches of oil from Morgantown, W. Va., to Millway, Pa., a distance of 210 miles, in the fall of 1907. The oil passed through several pumping stations and through a great number of loops. At no point were there less than two pipes through which this oil passed, and in several places there were five or six. The records of the tests purported to show the time at which the changes in gravity took place at the various stations, as oil of one kind displaced oil of another, the amount of mixture at each station, and the total amount of mixture at the destination.

An examination of these tests will show that they are very conflicting in their results and by no means conclusive. In the case of one of the tests, for example, at the first station reached by the oil the reported amount of mixture was 6,483 barrels, while at the next station it had fallen to 936 barrels, which is an obvious absurdity in view of the fact that the oil

did not pass into tanks at the first station, but was simply pumped on through the pipes with the additional force of the pumps of that station. At the end of the journey the mixture on another batch of oil was less than at one of the intermediate stations. Professor Schoder was asked about these cases, and the only explanation he could give was that they must have been errors, and the defendants never did explain them. (Schoder, vol. 16, pp. 3045–3047.) His attention was also called to the fact that according to still another of the tests there had been an admixture of 3,340 barrels between one station and the next, and of only 249 barrels between that station and the third, which is obviously entirely inconsistent with his theoretical statement that the amount of mixture is in proportion to the distance, as these stations were substantially the same distance apart. If there were such glaring errors and inconsistencies in certain parts of these three tests, it is quite likely that there were errors throughout them and in the others.

On cross-examination, Professor Schoder admitted that, for all his theoretical tests, he understood that oil of different grades was being transported every day, in the practical operation of the pipe lines, through the same pipe-line system. (Vol. 16, p. 3045.)

Mr. Vandergrift, superintendent of the Southern Pipe Line, also admitted that he did not know how much commercial importance there was, if any, in the amount of contamination which took place in the actual operation of the Southern Pipe Line. (Vol. 16, p. 3014.)

The Government undertook to ascertain fully the actual results in the way of admixture from the operation of all the Standard pipe lines which transport one kind of oil after another. It appeared, by the cross-examination of Mr. Vandergrift, that the shipment of oil through the pipe lines was under the direction and control of Mr. Pilkington, at 26 Broadway, and that he kept the records of such shipments and the records showing the amount of contamination. Mr. Pilkington was subpœnaed to produce these records (vol. 20, pp. 335–358). He produced statements showing the amount, kind, and grade of oil, by batches, transported on all the principal lines for several years, but he produced no records showing the amount of contamination on any line except the Southern Pipe Line, the same one whereon the tests we have

already referred to were made. He was asked regarding such records of contamination on the other pipe lines. He testified that there had been no records kept on this subject on any pipe line until September, 1907, which was the month the defendants commenced to take testimony in this case; that the reason for keeping such records was that in 1906 the law had been changed so as to require tariffs to be filed; that before that time the pipe lines stood the shortage on the high-grade oil due to admixture, but that under the tariff regulations the shipper was supposed to stand it, and that consequently records were begun on that subject. He said, however, that there were no records, even during this period of time, showing contamination on any of the other lines except the Southern Pipe Line, which, as appears clearly from the testimony, was the most complicated system. As already stated, it is also admitted by the defendant's witnesses (Vandergrift, vol. 16, p. 3002) that oil would tend to mix more in a complicated system, with numerous pipes, than in the more simple systems. Mr. Pilkington admitted that oils of different grades were shipped, one after another, through the New York Transit Line, the Crescent Pipe Line and others, and could not say why it was not as important to keep a record of admixture there as on the Southern Pipe Line. (Vol. 20, pp. 350–352.)

It certainly seems that if the reason he assigned for keeping the records of contamination was the real reason, it would have applied as much to one line as to another. Here is the man who has had charge of the shipments of the various grades of oil for years, yet he can not say that the contamination amounts to enough to be a practical objection to shipping oil of different grades through the same pipes, and does not know the amount of contamination at all except on the Southern Pipe Line. These circumstances are to our mind conclusive evidence that the defendants were undertaking to make a case by selecting the Southern Pipe Line for tests and records, because the contamination would be much larger there than on the other lines.

Even the records of the contamination in the Southern Pipe Line, however, show clearly that the Standard Oil Company can so adjust the pipe-line system as to reduce contamination greatly. It appears by the testimony of Mr. Vandergrift (vol. 16, p. 3003) that the numerous pipes com-

posing the Southern Pipe Line have for some time been divided in practical operation so as to make up two complete separate systems, and that through one system Pennsylvania crude oil chiefly is pumped, although at times, when emergency arises, this grade of oil is also sent through the other system, which is composed of a larger number of pipes. (Vol. 16, pp. 3003–3005.) It appears further as to the records of admixture introduced by Mr. Pilkington (Defendant's Exhibit 397) that three of the batches of oil covered by the exhibit, namely, Nos. 9, 10, and 20, went exclusively through what is known as No. 1 system of the Southern Pipe Line, which is the smaller group of pipes, having a capacity of about 18,000 barrels a day, whereas No. 2 system has a capacity of about 37,000 barrels a day and has a larger number of pipes. In the case of these three shipments, the amount of mixture in pumping oil from Morgantown, W. Va., to Centerbridge, Pa.—practically the entire length of the State of Pennsylvania—was insignificant, 1,669.83 barrels in No. 9, none whatever in No. 10 (although Mr. Pilkington thinks this is due to an error and that there was a shortage which was adjusted on the next batch), and 2,058.99 barrels in the case of No. 20 (see Pilkington, vol. 20, pp. 353–356). The amount of contamination in these cases was less than 2 per cent of the amount of the shipment and it is obvious that in the case of the much larger shipments which are frequently made the proportion of contamination would be much smaller. The contamination in these instances was far less than Mr. Schoder's alleged theoretical test, 8½ per cent, would call for. In the other cases reported in this exhibit where the contamination was greater the oil had passed through the much more complex No. 2 system.

We believe, in fact, that the testimony shows clearly that the Standard Oil Company, which has no less than four pipe-line systems reaching the seaboard, two of which, namely, the New York Transit system and the Southern Pipe Line, have each three or more pipes for the entire distance, can so operate its pipe lines as practically to confine an entire set of pipes to a given kind of oil, or at least to change from one kind of oil to another only at long intervals, so that the proportion of admixture to the amount of shipment would be practically insignificant (see the diagrams showing the number and character of the pipes of each pipe-line system, Peti-

tioner's Exhibits 990 and 991). It appears from the testimony of Mr. Vandergrift and Mr. Towl, the latter being the general pipe-line engineer of the Standard Oil Company, that the New York Transit system and the Southern Pipe Line are actually treated each as composed of two different systems, if not continuously at least for long periods of time, so that practically the Standard may be said to have six systems of pipe lines reaching the Atlantic seaboard. Mr. Towl admitted further that the New York Transit line could be operated as three separate systems, with some loss of power (vol. 20, pp. 317, 318), and apparently the same is true of the Southern Pipe Line.

Mr. Towl attempted to show that the separation of a complex system of pipes into two or more systems resulted in a loss of power and that to transport an equal quantity of oil through them after such subdivision would require additional expenditure for readjustment, pumping stations, etc. This may be true, although there is no definite evidence as to just what the loss of power or how much the necessary expenditure to offset it would be. It is not the province of the Government's counsel to point out just how the Standard should operate its pipe lines in order to reduce to a minimum the amount of admixture resulting from pumping different kinds of oil. We believe the testimony shows that, as the lines are actually operated at present by the Standard Oil Company in its own interest, the amount of admixture is not of commercial importance; and, even should it prove necessary to go to some additional expense in order to still further reduce the admixture and prevent difficulties in the operation of the pipe lines as common carriers, that is not a sufficient reason why the pipe lines should wholly fail and refuse to act as common carriers. It is their duty to provide the necessary facilities for conducting the business in a proper way. Even, moreover, if there should be some admixture of appreciable commercial importance resulting from such operation of the pipe lines, there is no insurmountable difficulty in establishing a system by which any loss or injury resulting therefrom should be adjusted as among shippers and added to the cost of transportation, or by which each shipper should, on an equitable basis, be required to accept a proper proportion of the contaminated oil.

It appears further from the above presentation of the testimony that one of the principal causes of such contami-

nation as does exist in the operation of the pipe lines arises from the looping of the lines with different sizes of pipe. Here again it is evident that a reasonable amount of care, with possibly some little expense in the loss of power or in the reconstruction of portions of the line, would do away with this difficulty. It would be possible, for example, where pipes of different size are used side by side, to control the flow by means of gates and valves, so that the oil of a given kind should reach the destination through both pipes at the same time. Where the pipes of different size run parallel up to a pumping station having tanks, the matter can be adjusted by diverting the oil from each pipe as it arrives to the proper tank. And, finally, it would be a simple matter, in most cases, to reconstruct the small sections of the pipe lines in which pipes of different size now exist side by side, so that all should be of the same size.

We believe, therefore, that the evidence clearly shows that, even as the pipe lines now exist and are operated, they can commercially transport oil of different grades for different shippers under reasonable regulations, and that such few difficulties as exist could be practically eliminated by very moderate additional expenditure in no wise approximating the sums which common carriers by rail are frequently called upon to expend for the proper and economical transportation of particular commodities. The gains to the public in the way of competition in the refining of oil which would result from the operation of the pipe lines as common carriers would be so enormous as to completely overbalance any difficulties and expenses involved; and there is no sufficient reason why the pipe lines of the Standard Oil Company should not, as those of other companies have done, fully and completely comply with the interstate-commerce act.

THE RATES FOR TRANSPORTATION CHARGED BY PIPE LINES ARE AND HAVE BEEN EXCESSIVE AND PROHIBITIVE FOR INDEPENDENT SHIPPERS AND RESULT IN ENORMOUS PROFITS TO PIPE-LINE COMPANIES.

Finally, we shall show that the rates named in the tariffs filed by the Standard pipe lines and the rates which they charge on all shipments are altogether exorbitant, and that even if tariffs covered all points of destination such rates would be prohibitive for independent shippers. Of course

the Standard Oil Company pays the same rates on its own shipments as are nominally held out as the rates for other shippers, but since the Standard owns the pipe lines it is merely transferring money from one pocket to another. Even from this standpoint, however, the high rates of the pipe lines are significant, because practically the public has to pay those rates in the price of oil.

We have already shown in the tables dealing with the profits of the Standard companies how excessive is the rate of profit of the pipe-line companies on their investment and upon their capital stock. (See pp. 22 to 27, *ante*, and the tables on pp. 18 and 19.) In addition to the balance sheets and profit and loss accounts of the pipe lines from which the tables just mentioned were compiled, the Government secured from Mr. Chesebro, the comptroller of several Standard pipe-line companies, additional accounts showing in greater detail the volume of their business, the cost of transporation, etc. (Petitioner's Exhibits 212–247.) These accounts covered all of the Standard pipe lines except those of the Prairie Oil and Gas Company and the Ohio Oil Company. Although the Government repeatedly asked Mr. Chesebro and other witnesses for these, it was never able to secure the accounts showing the results of their pipe-line operations separately from their other business.

From the exhibits thus taken directly from the Standard's accounts the Government prepared certain condensed statements for the several pipe lines, which were examined and their correctness sworn to by Mr. Chesebro. (Chesebro, vol. 2, pp. 641 et seq.; pp. 877–879.) These condensed statements are Petitioner's Exhibits 283–290, inclusive.

The Government also introduced maps (Petitioner's Exhibits 356a to 356j) prepared by the Standard Oil Company, showing the location of each of the pipe lines covered by these accounts, and Mr. Chesebro in his testimony identified the lines as shown on the maps with the systems distinguished in the accounts. We are thus able to show exactly the average charge for the transportation of crude oil over each division or line in the trunk pipe line system, the expenses, and the net earnings. (Vol. 2, p. 879.)

The accounts show also the assets and liabilities of each company in such detail that it is possible to distinguish that

part of the assets which is used in the business of transportation from the other assets. As already stated Mr. Chesebro admitted that many of these pipe-line companies had large amounts of assets, particularly cash and loans, which were not required for the business of the company and which should obviously not be taken into account in judging the reasonableness of its earnings and of the rates on which those earnings are based. We shall now consider the evidence as to the actual assets employed in the business more fully.

CHARGES OF THE TRUNK PIPE LINES.

From the condensed statements (Petitioner's Exhibits 283–289) showing the results of the operations of the trunk pipe lines for the years 1903 to 1906 we have prepared a table which shows for each trunk line the percentage of net earnings to net assets (both earnings and net assets being those from or in the pipe-line business only), the gross earnings per barrel—i. e., the actual average charge for transportation—the expenses of transportation per barrel, and the net earnings per barrel. We have also computed what would be the reasonable charge, on the basis of 10 per cent on the net assets for interest and profit plus 5 per cent for depreciation, this estimated reasonable return to capital being added to the operating expenses to give a reasonable charge.

In order to illustrate the general method of compiling these statements we give the following figures, taken or computed from petitioner's Exhibit 288, covering the business of the Southern Pipe Line Company for the year 1903.

Southern Pipe Line Company, 1903.

		Average (cents per barrel).
Barrels delivered	14,239,404	
Gross earnings from transportation	$4,081,442.92	28.66
Operating expenses	$352,009.99	2.47
Net earnings from transportation	$3,729,452.93	26.19
Total net assets	$6,129,485.93	
But the above net assets include $3,652,687.74 cash, of which we consider as not needed in pipe-line business	$3,400,000.00	
Leaving as net assets in pipe-line business	$2,729,485.93	
The transportation earnings constitue on these net assets a rate of ..... per cent..	136.6	
10 per cent profit plus 5 per cent for depreciation on these net assets would amount to	$409,422.89	2.88
Which added to operating expense gives a reasonable charge of		5.35

This statement shows that the Southern Pipe Line Company in 1903 earned, on the average, from its transportation, 28.66 cents per barrel. This represents practically its charge for transporting oil from Morgantown, W. Va., to Millway, Pa., or to Philadelphia. It does not correspond to any particular rate, because it is the average of the differing rates to Millway and to Philadelphia, with possibly other proportions of rates involved, but it shows the average charge for the transportation performed. The average cost of that transportation, on the other hand, was only 2.47 cents per barrel, so that the net profits from transportation were no less than 26.19 cents per barrel. The court is familiar with the fact that railroad companies, in general, think they are doing well if they can bring their operating expenses as low as 60 or 65 per cent of their operating earnings, whereas in the case of this pipe-line company in 1903 the operating expenses were only 9 per cent of the earnings.

The total net assets of this company, from which it earned over $3,700,000 net, were $6,129,485.93, but a large part of these assets consisted of cash, and Mr. Chesebro admitted that most of this cash was not necessary for the pipe-line business. We have allowed what we believe to be a liberal amount of cash as a proper asset of the pipe-line business itself, and have deducted the remainder. The earnings, in the form of interest, upon the cash held by the company are not included in the earnings from transportation shown in the table. The net assets employed in the pipe-line business proper were only about $2,729,485.93, or much less than the net earnings of this single year, the rate of net earnings on these assets being 136.6 per cent.

It is plain that 136.6 per cent is an altogether excessive and unreasonable profit, and that the rates on which this profit is based are therefore excessive and unreasonable. We do not pretend to assert just what would be a reasonable rate of return on an investment in the pipe-line business, but, to give some idea as to the excess of the rate actually charged over a reasonable rate, we have computed what profit per barrel transported would be necessary to give a return of 10 per cent for interest and profit on the investment, plus 5 per cent for depreciation. It appears that on a profit of 2.88 cents per barrel that rate of return upon the investment would be

secured. Adding this 2.88 cents per barrel to the operating expenses of 2.47 cents per barrel would give a charge of 5.35 cents; whereas the actual charge was 28.66 cents, or 5½ times as much.

The following condensed table shows the results of similar computations from the statistics in evidence for each of the trunk pipe lines, for the years 1903 to 1906, inclusive; for convenience, only the averages per barrel being given.[a]

[a] It should be explained, however, that in the case of the New York Transit Company, which has two trunk pipe lines, and in the case of the National Transit Company, which has three trunk pipe lines and also a gathering line, the reports furnished us do not give the assets invested in the different pipe lines separately. Consequently, it has been necessary to apportion the assets between the different lines on the basis of the amount of earnings of each pipe line controlled by these two companies respectively. As a convenient way of doing this, we have used the following method, which may be illustrated by reference to the New York Transit Company:

Having the total net assets of that company in its pipe-line business and its total net earnings from pipe-line transportation (including both divisions), we ascertain the rate of profit, for example, for the year 1903 to have been 131.8 per cent. We have assumed that the rate of profit on the business of the New York division and of the Buffalo division of this system is the same. On the New York division this rate of profit of 131.8 per cent was derived from net earnings of 36.26 cents per barrel. In order to ascertain what amount per barrel would be equal to a profit of 10 per cent with an allowance of 5 per cent for depreciation, it is merely necessary to calculate the fraction $\frac{15}{131.8}$ of this 36.26 cents, which gives 4.13 cents, as shown in the table. This method of computation is evidently substantially accurate, for the reason that the pipe-line charges of the several divisions are broadly similar in proportion to distance and the investment per barrel broadly similar in proportion to distance. In the case of the National Transit Company, the fact that the rate of profit on net assets can be ascertained only for the entire pipe-line business, including the local lines as well as the trunk lines, may slightly affect the validity of this method of computation; but, beyond question, it gives approximately correct results, and the difference between the actual charges and the estimated reasonable charge (based on 15 per cent for profit and depreciation) is so great that even a considerable change in the latter would not appreciably affect the argument.

The charges, operating expenses, and profits of the several Standard pipe lines, together with estimated reasonable charges.

INDIANA PIPE LINE COMPANY (TRUNK LINE DIVISION).

	1903.	1904.	1905.	1906.
Gross earnings from transportation (cents per barrel)	29.85	29.92	31.62	16.20
Operating expenses (cents per barrel)	2.37	2.29	2.46	2.48
Net earnings from transportation (cents per barrel)	27.48	27.63	29.16	13.72
Rate of profit on net assets in pipe-line business (per cent)	213.3	241.6	265.6	147.6
10 per cent profit plus 5 per cent depreciation on these net assets would be (cents per barrel)	1.94	1.72	1.65	1.39
Which, added to operating expenses, gives reasonable charge of (cents per barrel)	4.31	4.01	4.11	3.87

CRESCENT PIPE LINE COMPANY.

Gross earnings (cents per barrel)	43.01	43.01	43.01	23.27
Operating expenses (cents per barrel)	5.62	6.31	5.68	10.51
Net earnings (cents per barrel)	37.39	36.70	37.33	12.76
Rate of profit on net assets in pipe-line business (per cent)	95.8	84.1	89.3	22.5
10 per cent profit plus 5 per cent depreciation on these net assets would be (cents per barrel)	5.85	6.54	6.27	8.50
Reasonable rate (cents per barrel)	11.47	12.85	11.95	19.07

BUCKEYE PIPE LINE COMPANY (CYGNET DIVISION).

Gross earnings (cents per barrel)	13.08	12.42	11.90	13.90
Operating expenses (cents per barrel)	2.34	2.40	2.87	1.94
Net earnings (cents per barrel)	10.74	10.02	9.03	11.95
Rate of profit on net assets in pipe-line business (per cent)	86.5	67.0	63.8	65.8
10 per cent profit plus 5 per cent depreciation on these net assets would be (cents per barrel)	1.86	2.24	2.12	2.73
Reasonable rate (cents per barrel)	4.20	4.64	4.99	4.67

The charges, operating expenses, and profits of the several Standard pipe lines together with estimated reasonable charges—Continued.

NEW YORK TRANSIT COMPANY.

	1903.	1904.	1905.	1906.
Both divisions.				
Rate of profit on net assets in pipe-line business (per cent.)	131.8	147.2	145.5	76.9
New York division (including Crosstown Pipe Line).		*Cents per barrel.*		
Gross earnings	42.14	42.81	38.08	19.42
Operating expenses	5.88	5.33	5.83	4.01
Net earnings	36.26	37.48	32.25	15.41
10 per cent profit plus 5 per cent depreciation on net assets in pipe-line business would be	4.13	3.82	3.32	3.01
Which, added to operating expense, gives reasonable rate of	10.01	9.15	9.15	7.02
Buffalo division.				
Gross earnings	22.85	22.85	22.85	6.92
Operating expenses	1.40	1.50	1.34	1.09
Net earnings	21.45	21.35	21.51	5.83
10 per cent profit plus 5 per cent depreciation	2.44	2.18	2.22	1.14
Which, added to operating expense, gives reasonable rate of	3.84	3.68	3.56	2.23

NATIONAL TRANSIT COMPANY (TRUNK PIPE LINES).

For all the pipe lines of this company, including local lines, the rate of profit on net assets in pipe-line business (per cent)	68.9	61.4	[a] 53.9	63.3
Pennsylvania Pipe Line.		*Cents per barrel.*		
Gross earnings	38.98	38.98	35.87	14.86
Operating expenses	5.23	5.64	6.12	7.02
Net earnings	33.75	33.34	29.75	7.84
10 per cent profit plus 5 per cent for depreciation on net assets in pipe-line business would be	7.35	8.14	8.28	1.86
Which, added to operating expenses, gives reasonable charge of	12.58	13.78	14.40	8.88
Millway and Bayonne division.				
Gross earnings	16.80	16.80	15.06	7.99
Operating expenses	1.92	2.29	3.42	3.08
Net earnings	14.88	14.51	11.64	4.91
10 per cent profit plus 5 per cent for depreciation	3.24	3.54	3.24	1.16
Reasonable charge	5.16	5.83	6.66	4.24

[a] Based on the assumption that of the $12,168,811.97 of accounts receivable included in reported net assets, $10,000,000 is loans not used in pipe-line business.

The charges, operating expenses, and profits of the several Standard pipe lines, together with estimated reasonable charges—Continued.

NATIONAL TRANSIT COMPANY (TRUNK PIPE LINES)—Continued.

	1903.	1904.	1905.	1906.
Bear Creek and Kane Pipe Line.	*Cents per barrel.*			
Gross earnings	4.51	4.28	4.64	7.54
Operating expenses	.84	.95	1.34	.86
Net earnings	3.67	3.33	3.30	6.68
10 per cent profit plus 5 per cent for depreciation	.80	.81	.92	1.58
Reasonable charge	1.64	1.76	2.26	2.44
NORTHERN PIPE LINE COMPANY.				
Gross earnings (cents per barrel)	3.54	3.38	4.06	6.85
Operating expenses (cents per barrel)	2.92	2.06	1.89	2.00
Net earnings (cents per barrel)	.62	1.32	2.17	4.85
Rate of profit on net assets in pipe-line business (per cent)	7.6	16.1	25.1	[a] 34.4
10 per cent profit plus 5 per cent depreciation on these net assets would be (cents per barrel)	1.45	1.30	1.34	2.06
Reasonable rate (cents per barrel)	4.37	3.36	3.23	4.06
SOUTHERN PIPE LINE COMPANY.				
Gross earnings (cents per barrel)	28.66	28.53	28.39	23.03
Operating expenses (cents per barrel)	2.47	2.44	2.98	2.78
Net earnings (cents per barrel)	26.19	26.09	25.41	20.25
Rate of profit on net assets in pipe-line business (per cent)	136.6	195.9	127.2	[b] 63.4
10 per cent profit plus 5 per cent depreciation on these net assets (cents per barrel)	2.88	2.00	3.00	4.79
Reasonable rate (cents per barrel)	5.35	4.44	5.98	7.57

[a] 47.9 per cent if no account be taken of restoration of depreciation to net assets in this year.
[b] 102.1 per cent if no account be taken of restoration of depreciation to the assets in this year.

A careful examination of this table will show that the figures for the Southern Pipe Line Company for the year 1903, just presented, by no means exaggerate the profits and the extortionate rates of the Standard's trunk pipe lines generally. With the exception of the Northern Pipe Line Company, and of one or two other companies for single years, the net transportation earnings of these trunk pipe lines from 1903 to 1906 were in no case less than 60 per cent

on the net assets engaged in the pipe line business. The Indiana Pipe Line Company showed a rate of profit ranging from 148 to 266 per cent, the New York Transit Company from 77 to 147 per cent, the Southern Pipe Line Company from 63 to 196 per cent.

It may be noted at this point that the apparently very great decline in the rate of profit of the Southern Pipe Line Company on its net assets in the pipe-line business during 1906 (namely, from 127.2 per cent in 1905 to 63.4 per cent—itself not a particularly low figure—in 1906) is largely due to a mere bookkeeping adjustment. As in the case of most of the other pipe-line companies of the Standard Oil Company, a very considerable part of the original investment in this pipe line had been written off for depreciation. In 1906, for some reason, the entire amount of depreciation which had been written off throughout the history of the Southern Pipe Line Company was restored to the assets, thereby increasing greatly the value of the plant as it stood on the books. The amount of depreciation thus restored was treated as a profit of the company for the year, but it was not, of course, a profit on the pipe-line business, and was not so figured in the above table. Had there been no such restoration of depreciation, the net earnings from transportation in 1906 would have represented a return of 102.1 per cent on the net assets, instead of 63.4 per cent. In the case of the Northern Pipe Line also there was a restoration of depreciation during this year, 1906, and had this not occurred the rate of profit of that company would have been 47.9 per cent instead of 34.4 per cent.

In the case of practically every one of these companies, for each of the four years covered by the table, the actual gross earnings per barrel—that is to say, the actual average charge for transportation—will be seen to have greatly exceeded a charge based upon a return of 15 per cent on the investment. Thus, in the case of the New York Transit Company, its gross earnings, or charge per barrel, in 1903 on the New York division averaged 42.14 cents. This represented practically the rate for transportation from Olean to New York Harbor. The operating expense for this haul was only 5.88 cents, leaving 36.26 cents for profit; while, had the company been content with 10 per cent profit upon

its net assets, with 5 per cent for depreciation fund, a charge of 10.01 cents would have been sufficient, or less than one-fourth of the actual average charge. Substantially the same excess in the actual charges appears for 1904 and 1905. The apparent marked decline in the average charge of the New York division of the New York Transit Company in 1906 (namely, from 38.08 cents per barrel in 1905 to 19.42 cents per barrel in 1906) was largely due to the fact that in 1906 the transportation covered only the distance from Olean to Unionville, N. Y., on account of the transfer of the lines in New Jersey to the Standard Oil Company of New Jersey, as already described.

Again, take the Indiana Pipe Line Company. Its actual average charge for trunk-line transportation during the year 1903 was 29.85 cents per barrel, while its operating expenses were only 2.37 cents per barrel, or only 8 per cent of the gross earnings. On the basis of 10 per cent upon the net assets employed in the pipe-line business with a 5 per cent depreciation fund, the charge per barrel would have been only 4.31 cents, or one-seventh of the charge actually made.

We invite the attention of the court to every detail of this remarkable statement of the charges of these pipe-line companies, their actual costs, and the enormous profits which they obtain. We have shown already that there are also enormous profits in the manufacturing business and in the marketing business, but the pipe-line business shows the most excessive profits of all.

While, as already stated, the average charge of each of these pipe lines, as shown in these tables, does not, in a considerable number of cases, correspond to any particular tariff rate from one point to another, nevertheless, the excess in the average charge above a reasonable charge shows the effect, and measures the amount, of the excess in the rates of the Standard's pipe lines. As we shall show shortly, substantially the same rates which resulted in these enormous earnings from 1903 to 1905 are now named in the tariffs filed with the Interstate Commerce Commission by these pipe lines, so far as such tariffs have been filed at all. The rates contained in these tariffs are therefore relatively as exces-

sive and unreasonable as the charges shown in the above table.

The attention of the court may, however, be called by the defendants to the fact that the percentage of profit of several of the pipe-line companies was lower in 1906 than in the preceding years (though still far above a reasonable rate) and that the average charge for transportation per barrel was also less. This might at first blush seem to indicate that the rates in 1906 were lower than in preceding years. Such, however, was not the case, as we shall show. As we have already stated, the explanation of part of the decrease in the earnings per barrel of the New York Transit Company lies in the fact that part of its lines had been transferred, toward the close of 1905, to the Standard Oil Company of New Jersey. The same is true of the National Transit Company. Another thing, however, which has tended to reduce the earnings per barrel of most of the trunk pipe lines, and which has also tended to reduce the rate of profit on the investment, without any reduction in the rates of transportation between any two given points, lies in the increased distance to which much of the oil passing through these pipes is transported. Whereas formerly most of the oil passing through these trunk pipe lines came from the Pennsylvania field and the Lima-Indiana field, a large quantity in 1906 came from the more distant Illinois and Mid-Continent fields, the proportion from the Pennsylvania field especially declining. This appears clearly from Petitioner's Exhibits 992 to 1001, which exhibits show each batch of crude oil, separating the different grades, shipped by each of the pipe lines for several years. It is presumable that, although tariffs showing the rates are not filed, the rates from Oklahoma, Kansas, and Illinois to the seaboard are less per mile than the rates from Pennsylvania and Ohio, this being a common practice of railroads and other carriers, to make a relatively lower rate for the longer haul. The effect of this change in the origin of the oil transported would, as the court will readily see, be to reduce the average rate of earnings per barrel of the pipe lines without necessarily any reduction in the charge for transportation from a given point to another point, and in the absence of a counterbalancing increase in the number of barrels handled

by a given pipe line would reduce its rate of profit on its investment.

That, as a matter of fact, there has been no such reduction in the charge for transportation is apparent from a list of the pipe-line rates in force for the years 1903 to 1906. Such a list of rates was secured by the Government from the Standard Oil Company, and constitutes Petitioner's Exhibit 375. This exhibit shows separately the rates in effect during 1903, during 1904, during the period from January 1 to October 31, 1905, and during the period from November 1, 1905, to August 28, 1906, at which last date the Hepburn Act went into effect and certain of the rates, but not all of them, were filed. It is evident that, since two-thirds of the year 1906 had elapsed before these rates went into effect, the average charges of the pipe-line companies for that year must have been primarily determined by the rates in effect prior to August 28. The statement of rates in Petitioner's Exhibit 375 shows that the rates from November 1, 1905, to August 28, 1906, were, so far as they applied to and from the same points, with one or two slight exceptions, absolutely identical with the rates in effect prior thereto. Not only so, but the rates filed with the Interstate Commerce Commission, and in effect after August 28, 1906 (Petitioner's Exhibit 39), were practically the same as the rates between the same points in effect prior thereto, most of them precisely the same. The practical identity of the rates, so far as they were filed, with the rates previously existing is clear proof that the rates filed are as excessive as were the average charges of the pipe lines during the preceding years shown in the above table in this brief.

It appears therefore clearly that, even if any independent shipper could have his oil transported by the Standard's pipe lines as common carriers to the place where such shipper wished it transported, he would be paying a rate from four to seven times greater than a reasonable rate, and would be at an enormous disadvantage as compared with the Standard Oil Company, which, although it nominally charges itself the same rates, really has to pay for the transportation only the actual cost.

The defendants may contend that the rates of 10 per cent for profit on investment and of 5 per cent for depreciation,

which we have used in the above computations of a reasonable charge, are too low. They have in fact undertaken to create the impression that the pipe-line business is a very hazardous one, which requires consequently either a very high rate of return or a very high depreciation charge, particularly to cover the possibility that the pipe lines will cease to have a paying business on account of the decline in the production of the oil fields which they serve. We submit that the pipe-line business, as carried on by the Standard Oil Company, is obviously not a hazardous business. Having as it has a practical monopoly not only of pipe-line transportation but of the sale of the product which is transported through the pipe lines, and being practically able to charge what it will for transportation and what it will as a price for the product, its risks are reduced to a minimum. A business which, like that of most of these pipe lines, has paid from 60 to 200 per cent per year over a series of years can not be considered very hazardous. The alleged risk of exhaustion of the oil fields has not proved in practice a serious one, for as rapidly as one oil field has declined in production others have been discovered, so that, as the statistics show (see particularly Petitioner's Exhibit 977), the total production has greatly increased. Moreover, these new oil fields have been so situated that the Standard has been able to use the existing trunk lines for transporting the additional product; the same pipe lines which formerly were chiefly occupied for transporting oil from western Pennsylvania and West Virginia to the seaboard later took the oil from Ohio and Indiana, and are now transporting the oil originating in Illinois and the Mid-Continent field. The pipe lines of the Standard have in fact been kept continuously busy for many years.

Moreover, these enormous profits are in addition to very liberal allowances which the Standard Oil Company has made for depreciation in the past. We believe that, in view of the large extent to which the Standard Oil Company has repaid itself for its pipe-line investment out of its profits, by means of depreciation allowances in the past, the allowance of 5 per cent which we have made is a fair one. But even if a decidedly greater allowance were deemed proper, the fact would still remain that the earnings of the pipe lines are far in excess of a reasonable charge. It is evident that the

Standard Oil Company can not claim, because of the alleged risks of the business, that it is entitled at the same time to a high rate of profit on the investment and a high allowance for depreciation, because a liberal depreciation allowance itself provides for risk by the repayment to the Standard of its investment.

We do not think that the defendants will question the fairness of the deduction of surplus cash, loans, and bonds in determining the net assets actually employed in the pipe-line business of these various companies in the above table, and on which net assets the rate of profit from pipe-line transportation is computed. As we have already stated, we have, in most cases, taken as the net assets in the pipe-line business an amount considerably less than the total net assets of the several companies, having excluded particularly large amounts of surplus cash on hand, money loaned, and, in the case of the New York Transit Company, government bonds held by that company. Mr. Chesebro, the comptroller of these pipe lines, admitted in his testimony (vol. 1, p. 387; vol. 2, pp. 636–638) that a large proportion of the cash held by these pipe lines, and all the money loaned, represented assets not required in the pipe-line business.

The slightest examination of the balance sheets of these companies will make this situation clear. Take, for example, the Southern Pipe Line Company. In 1904 (see its condensed balance sheet, Petitioner's Exhibit 288) the total net assets of this company were $5,205,219.42 (gross assets less notes and accounts payable and oil purchase contingent). These net assets, however, include no less than $3,623,315.78 in cash; and this company had carried substantially this same amount of cash from 1899 to 1905, while in 1906 it carried a still larger amount as a loan to the National Transit Company, another Standard concern (see balance sheets, Petitioner's Exhibits 67–74). Mr. Chesebro said that considerable sums of money were needed by the pipe lines to take care of possible extensions required in the business, but admitted that there was no immediate prospect that any such sum of money would be required by the Southern Pipe Line Company. When the court comes to consider that the actual net earnings of this company for a number of years were about $3,500,000 per annum (excluding the Trainor payments

hereafter referred to); that its total operating expenses were only about $300,000 or $400,000 per annum, and that the original cost of the plant was only a little over $4,000,000, it is perfectly evident that there was no need of carrying $3,000,000 or $4,000,000 of cash on hand for possible unforeseen contingencies. It is apparent that with such enormous earnings coming in all the time, a very limited amount of cash in reserve for immediate needs is sufficient for the business of such a company. It is worth noting, for instance, that in 1906 the Southern Pipe Line Company had at the end of the year only $25,419.36 in cash, although it had a loan of more than $6,500,000 to the National Transit Company (Petitioner's Exhibit 288). It may be stated further that several of the other pipe line companies, which during the years prior to 1906 had enormous amounts of cash on hand, at the end of 1906 had only very small amounts, but in place apparently of the cash had large loans to the National Transit Company.

In the case of the Southern Pipe Line Company for 1904 we have assumed that $3,400,000 out of the $3,623,315.78 of cash held was wholly unnecessary to the pipe-line business, leaving what seems a very liberal amount, $223,315.78, as an asset in the business. Of course, in computing the rate of profit on the assets thus reduced, we have not included the earnings or interest upon such cash, but only the transportation earnings.

This same explanation which has been made regarding our treatment of the figures for the Southern Pipe Line Company for this one year may be applied to this and several other pipe lines for all of the years under consideration, nearly all of them having had such enormous sums of surplus of cash or loans in their balance sheets. We have in all cases allowed a very liberal amount of cash as part of the assets employed in the business, the amount in no case being less than $100,000 for each company, and usually considerably more. We may mention, however, one other illustration. The New York Transit Company (Petitioner's Exhibit 284) in 1904 had net assets (including the value of the Crosstown Pipe Line, which, for reasons hereafter explained, we have treated as part of the New York Transit system) amounting to $7,504,813.50. These net assets

include, however, $3,534,266.70 of Government and New York state bonds, and about the same amount had been carried for several years previously. These bonds were evidently not a necessary asset of the pipe-line business, and were so admitted by Mr. Chesebro. In this year, moreover, this company had on hand $1,568,093.88 of cash, which was much more than was needed in its pipe-line business. In our computation of the assests employed in the pipe-line business we have excluded these bonds and $1,350,000 of the cash. In 1906 the New York Transit Company kept on hand for actual use in the pipe-line business only $23,194.13 in cash, but had a large loan to the National Transit Company, which loan we have also excluded from the assets in the pipe-line business in computing the profits of that year.

The fact of the matter appears to be that the earnings of these pipe-line companies are so large that they do not know what to do with their money. It is perfectly evident that they could rebuild their pipe lines out of their earnings every year, or at most every two years, and it is absurd to argue that they have any need of such enormous sums of cash and loans as reserve assets in their pipe-line business.

The defendants may, however, claim that the above computations of the rate of profit of the several trunk lines, and of reasonable charges, are unfair because in the computations the net assets have been taken on the basis of the depreciated value of the plants as shown on the books of the several companies, that the amount of depreciation which the companies have written off, at least in some cases, is excessive, and that the true and fair value of the plants is greater. We have already shown elsewhere (p. 26) that, even if the most liberal possible basis were adopted, and the entire original cost of the pipe lines counted with the present net assets, without any deduction for depreciation, the rate of profit would still be exceedingly high for the several pipe-line companies, with one or two exceptions. The same would be true of the trunk pipe lines separately, in the case of those companies which have both trunk and local lines. In fact, in general, relatively less has been written off for depreciation on the trunk pipe lines than on the local lines. We have not considered it worth while to compute what the rate of profit of the

trunk pipe lines would be on the net assets so calculated, but the statement just referred to shows clearly that for most of the trunk pipe lines the rate of profit on the net assets thus calculated would exceed 50 per cent per annum. If, moreover, in calculating a reasonable charge, an allowance of 15 per cent for profit and depreciation were made on the net assets, including the entire original cost of the several plants, this change would not very materially affect the total reasonable charge. The actual charge in most cases would still be from 3 to 5 times greater than a reasonable charge.

THE CROSSTOWN PIPE LINE.

As already stated, we have in the above computation of the profits of the New York Transit Company included with that company the business of the Crosstown Pipe Line. This was done also in the condensed statement of the results of the business of the New York Transit Company, the correctness of which was testified to by Mr. Chesebro. (Petitioner's Exhibit 284.) It appears by the testimony that the Crosstown Pipe Line is a short line owned by the Standard Oil Company of New York, extending from the middle of the Hudson River to Brooklyn, and it was for years carried on the books of that company at a value of $84,833.42. (Petitioner's Exhibit 284 A; Chesebro, vol. 2, pp. 643 and 877.) It appears further, however, that until the transfer of the line from Unionville to New York to the Standard Oil Company of New Jersey, the New York Transit Company, which then operated the through line from Olean to New York Harbor, operated this Crosstown Pipe Line as well, and paid the Standard Oil Company of New York an annual rental for the use of it. The rental paid, as shown by the accounts, was as follows:

1899	$514,489.69
1900	1,129,054.54
1901	1,191,145.86
1902	1,138,142.11
1903	616,312.76
1904	606,325.42
1905	438,191.03

(Chesebro, vol. 1, p. 392; also Petitioner's Exhibits 101–107.)

The idea of a pipe line a few miles long, which for years has stood on the books as costing $84,000, bringing in a rental of from $438,000 to $1,191,000 per annum is so ridiculous as to require no explanation for excluding the item from the operating expenses of the New York Transit Company. We have, however, included the value of the Crosstown Pipe Line with the net assets of the New York Transit Company; in other words, we have treated the earnings, expenses, and assets of the two companies as if they were one.

Another thing which seems to show that the payment of this enormous rental was intended to cover up earnings is the apparent attempt of the defendants, in their testimony, to conceal all information concerning the Crosstown Pipe Line. (See testimony of Payne, vol. 1, pp. 344–347; W. H. Tilford, vol. 1, pp. 462, 463.)

In view of the fact that this pipe line is an important, though short, pipe line, leading to the large refineries of the Standard Oil Company in Brooklyn; that it was for some reason transferred from the National Transit Company of the Standard Oil Company of New York, and that it has paid the latter company these enormous rentals, it is improbable that the principal officers of the pipe-line companies and of the Standard Oil Company of New York knew nothing about the matter until it was dragged out of them and they were forced to produce the information from the books.

PAYMENTS BY CERTAIN PIPE LINES TO P. S. TRAINOR.

There is other evidence in the accounts of these Standard pipe lines of apparent attempts to cover up enormous earnings. The most remarkable one, perhaps, is a series of items standing on the books of the Southern Pipe Line Company charged to P. S. Trainor. This item appears each year from 1899 to 1905, inclusive, and then disappears. It appears according to the final balance sheets of the Southern Pipe Line Company that it paid to P. S. Trainor from $2,300,000 (in round numbers) to $4,600,000 per annum. The seven years, 1899 to 1905, together showed total gross earnings of the Southern Pipe Line Company $29,521,621.86, total operating expenses $2,332,554.47; paid to P. S. Trainor $22,131,160.12, leaving an apparent net profit of $5,057,907.27 (not deducting minor adjustments.)

This enormous sum appearing under Trainor's name is not charged as operating expenses and is admitted not to be such. In fact, two sets of balance sheets and profit and loss accounts were presented by the Standard Oil Company for the Southern Pipe Line. One set is the operating accounts presented by Mr. Chesebro, controller of the Southern Pipe Line (Petitioner's Exhibits 216–219), which do not show this item at all; so that the profits of the Southern Pipe Line Company, according to this set of figures, include the $22,131,160.12 thus paid to Trainor, giving a total profit of over twenty-eight millions. The other balance sheets and profit and loss accounts of the Southern Pipe Line (Petitioner's Exhibits 67–74), submitted in evidence and testified to by the assistant general comptroller of all the Standard companies show these Trainor items charged against earnings.

The Government undertook to find out what these items, amounting to over $22,000,000, were, but utterly failed. Nobody connected with the Standard Oil Company who ought to know could be made to admit any clear knowledge.

Mr. Chesebro was first interrogated as to this item on September 27, 1907 (vol. 1, pp. 390, 391), but could give no information whatever on the subject. He admitted that this item was not an expense of the transportation business, that there was no such item in 1906, and that he was directed to make the entry by Mr. John Bushnell, who resigned the 1st of July, 1907, which was shortly after the time the court appointed the examiner in this case and preparation was being made to take the testimony. Mr. Chesebro agreed to look up the account further, and did so. He testified (vol. 2, pp. 633–636), but could give no information on the subject beyond the fact that it was not an operating expense, that the item was charged in each year and taken out of profits, and all he had was a journal voucher, taking no voucher from Mr. Trainor and no receipt. Usually where money is paid out a voucher is taken. A journal voucher is simply an order to the bookkeeper to make a charge, but this journal voucher did not show what the money was paid for. These vouchers were not signed by P. S. Trainor, and no such entry has been made since Mr. Bushnell left the company. He did not know that the Southern Pipe Line Company was engaged in any business except the transporting of oil, and he knew of no reason

why this should be paid to Mr. Trainor. A subpœna was issued for Mr. Bushnell but the officer was never able to serve him.

It will be remembered that Mr. Trainor has charge of the purchase of oil for all the Standard companies. He was interrogated as to this item (vol. 2, pp. 646–648) and testified that the money was never paid to him; that he had no money account with the Southern Pipe Line Company; and that all he had was an oil account. The examination showed that this company was engaged in no business with Mr. Trainor or with anyone else where this item could have been honestly charged against its income. Mr. Trainor testified further that he had never heard of this item in the accounts of the Southern Pipe Line Company at all, and never gave any voucher or receipt therefor (vol. 2, p. 648).

Mr. William G. Rockefeller, a director of the Southern Pipe Line Company and the treasurer of the Standard Oil Company of New York, of which latter company P. S. Trainor is an employee and agent for the purchase of crude oil, testified that he knew nothing about these items of payments of the Southern Pipe Line Company to P. S. Trainor. (Vol. 2, p. 867.) He was asked to look up the matter in the books of the company, but reported later that he had been unable to find out anything about these items. (Vol. 3, pp. 1421, 1422.)

Mr. A. H. Brainerd, comptroller of the Standard Oil Company of New York, was the only witness who attempted to make any explanation of these enormous items, and his explanation was by no means definite. His testimony on the subject is as follows (vol. 2, pp. 696–698):

> Q. What do you know about it?—A. P. S. Trainor reports to the Standard Oil Company of New York; a part of his losses are charged to some of the pipe lines, the Southern Pipe Line, for instance. They would show it as a disbursement, but it should not have been as a payment to P. S. Trainor, because it was entirely the Standard Oil Company of New York. P. S. Trainor simply transferred his balance to the Standard Oil Company of New York.
>
> Q. It should not appear in the balance sheet of the Southern Pipe Line at all, should it?—A. Why, certainly.

Q. Why?—A. Because they had reimbursed the Standard Oil Company of New York to that amount.

Q. Do you mean to say that in the year 1904 the Southern Pipe Line Company lost $3,915,836.15?—A. No; I don't say that. I don't know that.

Q. You don't know it?—A. No, sir.

Q. Then that amount is charged as an expense?—A. Yes.

Q. Against the Southern Pipe Line Company for that year?—A. It appears so there.

Q. Now, why should it be?—A. I don't know; that may be the amount, as I say, that they have paid to the Standard Oil Company of New York.

Q. Well, why should the Southern Pipe Line Company, out of its earnings in that year, pay all its net earnings, in fact, to the Standard Oil Company of New York?—A. I don't know why it was done.

Q. But the Standard Oil Company of New York reports show no losses on P. S. Trainor's purchases for that year?—A. Well, they would not, if they were reimbursed for them.

Q. Do you know that the Southern Pipe Line Company reimbursed the Standard Oil Company of New York with these amounts that appear charged to P. S. Trainor here?—A. I couldn't say positively that those amounts are the amounts received by the Standard Oil Company of New York.

Q. Did the Southern Pipe Line Company pay the Standard Oil Company of New York any sums?—A. Yes, sir.

Q. During those years?—A. Yes, sir.

Q. You don't know how much?—A. I can't recall it to my mind.

Q. Do your books show?—A. No; I have no books that will show.

Q. You have no books that would show it?—A. No, sir.

Q. How do you know it, then?—A. Well, as I recall it, I have approved advices for certain amounts to these companies which were taken up by the Standard Oil Company of New York. I don't recall the amounts.

Q. You don't recall the amounts?—A. No.

Q. Were those losses made by Mr. Trainor in the purchase and sale of oil?—A. I presume so.

* * * * *

Q. You can't give any other explanation of these large payments charged to Mr. Trainor's account, can you?—A. No, sir. My explanation is that it is a misnomer, being charged to P. S. Trainor.

Q. They should have been charged to whom?—A. Standard Oil Company of New York. That is whom the payments were made to.

Q. The Standard Oil Company of New York. Why should the Southern Pipe Line Company pay to the Standard Oil Company of New York, say in 1904, any such sum of money?—A. I don't know.

Q. You don't know anything about it?—A. No, sir.

Q. You don't mean by that that the Southern Pipe Line Company lost that amount of money?—A. I don't know what it means.

Q. You don't know anything about what it means?—A. No, sir.

Apparently Mr. Brainerd was trying to give the impression by this testimony that P. S. Trainor, as the agent of the Standard Oil Company of New York for the purchase of crude oil, both for the use of the company and of other Standard companies, at times incurs a loss in that business, such as might occur in case of a fall in the price of crude oil between the time of purchase and the time of sale to the refiners, and that part or all of this loss is charged against the Southern Pipe Line (and other pipe lines) and by them reimbursed to the Standard Oil Company of New York. Even if this be the true explanation (which seems to us most unlikely), it is obvious that any such scheme of reimbursing out of pipe-line earnings the possible losses incurred by another company in the purchase and sale of crude oil, which is no part of the pipe-line business, is an absurdity in accounting, and also has the important effect, doubtless designed, of enormously understating the true earnings of the Southern Pipe Line Company.

It is inconceivable, however, that this $22,000,000 was a loss, and it if was, certainly either Mr. Trainor, who had charge of the purchase and sale of crude oil, Mr. Chesebro, the comptroller of the pipe line companies; Mr. Brainerd, the comptroller, or Mr. Fay, the assistant comptroller of various of the other Standard companies; Mr. Tilford, the treasurer; Mr. W. G. Rockefeller, the assistant treasurer of the Standard of New Jersey and treasurer of the Standard of New York (which latter companies purchased all the crude during this time and sold it to the refineries); or Mr. Payne; all of whom were interrogated on this subject, would have been able clearly to demonstrate that there had

been such losses, to show how they occurred, and fully to explain this item. Even Mr. Brainerd does not pretend to say positively that all or any part of this charge is a loss and was thus charged, although he says he presumes it is.

As a matter of fact, during this period from 1899 to 1905, inclusive, when these charges were being made, the price of Pennsylvania and Lima oil did not decrease, and there was therefore no loss to be reimbursed. In several years in which large payments were made on the Trainor account the price of these oils advanced sharply; the prices in 1903 and 1904 being decidedly higher than for 20 years previously. (Petitioner's Exhibit 977.)

The foregoing testimony was in September and October, 1907. Over a year later, when Mr. Archbold was on the stand, he was asked to explain the items amounting to over $22,000,000. (Vol. 17, p. 3438.) He said he could not do so, but that his general impression was that this was an adjustment of the accounts between refining companies which Mr. Trainor was supplying with crude oil and the pipe-line companies, both being under common ownership. But he did not show what there was to adjust and to take out of the earnings of this pipe-line company as having been paid to Trainor. Mr. Archbold finally admitted that he knew nothing about it. He was asked to look it up. He returned to court about two weeks later and was again asked to make the explanation (pp. 3653–3655). He testified then as follows:

> Q. The next is No. 11 on the same page. Find out about the payments to P. S. Trainor in the Southern Pipe Line Company's accounts.
>
> Mr. MILBURN. Well, if you know any more about it now than you did when you were here before, say so.—A. I do not.
>
> Q. But, Mr. Archbold, you can find out, can't you?—A. Well, I don't know how I can, Mr. Kellogg.
>
> * * * * *
>
> Q. You wouldn't charge the Southern Pipe Line with having paid out $22,000,000 unless it was paid out, would you?—A. Well, I don't know why it was done. You say that Mr. Trainor says he didn't get it. I don't know who did. I don't think anybody got it.

Q. Well, what became of it?—A. I don't think anything became of it, so far as I know. I don't know a thing about it.

Q. Is the $22,000,000 in the treasury of the pipe-line companies?—A. I couldn't answer you.

Q. You think it wasn't paid out; then it must be in the treasury.—A. I don't know. I am merely quoting from Mr. Trainor.

Q. Well, let me see if I can get at it in any other way. It appears that those companies earned and had in the treasury that $22,000,000. Now, what became of it?—A. I tell you I don't know.

Q. Is it there now?—A. I do not know.

Q. It wasn't paid to Trainor?—A. Well, you say he says he didn't get it.

Q. Well, you believe it if he says so, don't you?—A. I would believe anything that Mr. Trainor would say; yes.

It will be remembered that over a year had elapsed since the Government had, by subpœnaing many witnesses, undertaken to procure the information about this $22,000,000. Mr. Archbold knew of these efforts to obtain this information—he is the vice-president and in general charge of the Standard Oil Company—and after taking a recess of twelve days, from December 3 to December 15, he returned to the stand and swore that he could not find out what became of the $22,000,000.

The same kind of payments, only in smaller amounts, were made by the National Transit Company to P. S. Trainor. From 1903 to 1905, the only years for which details for this company were reported, these payments amounted to $4,035,521.14. (Petitioner's Exhibits 244–246.) Quite likely also such payments explain the fact that in the balance sheets of the National Transit Company, which during the years from 1899 to 1905 controlled the Crescent Pipe Line Company, there appeared in several years a loss on the business of the Crescent Pipe Line Company (Petitioner's Exhibits 109–115); whereas the operating balance sheets and profit and loss accounts of the Crescent Pipe Line Company, put in evidence by Mr. Chesebro, show in every year a large profit. (Petitioner's Exhibits 224–227.)

EXCESSIVE CHARGES OF THE STANDARD'S GATHERING PIPE LINES.

It appears by the testimony that the accounts of the local or gathering pipe lines of the Standard Oil Company are kept wholly separate from those of the trunk lines, even when a single subcompany owns both trunk lines and gathering lines. Balance sheets, profit and loss accounts, and other summarized accounts of the business of the local pipe lines controlled by the Standard Oil Company were obtained from Mr. Chesebro, the comptroller of the pipe lines, covering the year 1905, and constitute Petitioner's Exhibits 236 to 243, inclusive. A summary of these accounts covering all of the principal local lines, except the United Pipe Lines Division of the National Transit Company, was prepared by the Government, and its correctness was testified to by Mr. Chesebro. (Petitioner's Exhibit 290.)

It appears clearly from these accounts that the net profits of the local pipe lines are excessive, and that their charges are excessive. We have not, however, been able to compute precisely the average charge for transportation per barrel, and the average cost per barrel, and other items reduced to the barrel basis, in the same way as we have done for the trunk pipe lines, for the reason that the complexity of the business, as indicated by the accounts put in evidence, renders it impossible to ascertain properly the number of barrels transported by each local pipe line, and for which a charge is made. Some of the transportation, by intercompany adjustment, is performed without charge, and in other cases the local pipe lines participate in through rates and get proportions thereof instead of a strictly local charge of their own. It appears clearly, however, from the accounts of these pipe lines, that the regular gathering charge is 20 cents per barrel, and that this charge applies on the larger part of the oil handled. This fact also appears from the testimony of various witnesses. Moreover, we are able to show from the accounts in evidence approximately how much the earnings of these local lines for transportation exceed a reasonable amount of earnings, sufficient to give a fair return upon the investment. Since, therefore, the prevailing charge is 20 cents per barrel, it is possible to ascertain approximately how

much a reasonable charge per barrel would be, though not with the same precision as in the case of the trunk pipe lines.

It appears, for example, from these accounts (Petitioner's Exhibit 290) that the local division of the Indiana Pipe Line Company in 1905 earned net from both the transportation and storage of oil $2,230,632.04. The net assets of the company in the local business were $2,230,895.39, so that the earnings were precisely 100 per cent on the investment. Assuming for convenience that a reasonable return would be secured from a profit of 10 per cent on the assets, with 5 per cent for depreciation, it is evident that reasonable net earnings would be fifteen one-hundredths of the actual net earnings. We can therefore apply this ratio, fifteen one-hundredths, to determine what would be reasonable net earnings from the transportation business of the Indiana Pipe Line Company, excluding the storage business. The net earnings from transportation were $2,171,905.51. We calculate fifteen one-hundredths of these net earnings as being reasonable net earnings, viz, $325,785.83. Adding these reasonable net earnings to the actual operating expenses, $433,016.14, would give a total charge for transportation of $758,801.97 as a reasonable charge, instead of $2,604,921.65, the actual charge (i. e., gross earnings from transportation). In other words, a reasonable charge for transportation by this company (assuming 15 per cent to represent a reasonable provision for profit and depreciation) is equal to only 29.1 per cent of the actual charge, and since the actual charge is based chiefly upon the rate of 20 cents per barrel, a reasonable rate would be 29.1 per cent of 20 cents, or only 5.8 cents per barrel.

We have made similar computations for each of the local pipe lines, except the local division of the New York Transit Company, which does an exceedingly small business, and the Cumberland Pipe Line Company, which includes trunk pipe line transportation as well as local business. In some cases in computing the rate of profit we have deducted from the net assets of these pipe line companies, or local divisions of pipe line companies, loans to the National Transit Company and surplus cash, for the same reasons for which we made such deductions in the case of the trunk pipe lines. Without pre-

senting the details showing the method of computation for each company, we here summarize the results:

Charges and profits of the Standard's local pipe lines, 1905.

	Indiana Pipe Line (local division).	Buckeye Pipe Line (Lima division).	National Transit Co. (United Pipe Lines division).
Transportation earnings	$2,604,921.65	$2,009,948.53	$1,323,606.15
Transportation expenses (including all general expenses)	433,016.14	605,238.24	504,557.88
Net earnings from transportation	2,171,905.51	1,404,710.29	819,048.27
Net earnings from transportation would be, on basis of 10 per cent for profit and 5 per cent for depreciation	325,785.83	302,304.94	478,043.74
Which added to transportation expenses would give as reasonable gross transportation earnings	758,801.97	907,543.18	982,601.62
Which is the following per cent of the actual gross transportation earnings per cent	29.1	45.2	74.2

	South West Pennsylvania Pipe Lines.	Eureka Pipe Line.	Total for 5 companies.
Transportation earnings	$565,077.40	$3,898,171.95	$10,401,725.68
Transportation expenses (including all general expenses)	281,016.51	705,659.44	2,529,488.21
Net earnings from transportation	284,060.89	3,192,512.51	7,872,237.47
Net earnings from transportation would be, on basis of 10 per cent for profit and 5 per cent for depreciation	(a)	880,288.38	1,912,284.41
Which added to transportation expenses would give as reasonable gross transportation earnings	.....	1,585,947.82	4,441,772.62
Which is the following per cent of the actual gross transportation earnings per cent	.....	40.7	42.7

a Not figured because net assets in pipe-line business are less than zero; in computing the total for the 5 companies the excess of the liabilities of this company over its assets is deducted from the net assets of the other companies.

One peculiar point about this table requires comment. It will be seen that in the case of the South West Pennsylvania Pipe Lines the net assets, so far as the pipe-line business proper was concerned, were in 1905 less than nothing. That is, its liabilities exceeded its net assets. (See Petitioner's Exhibit 290.) The total net assets of the company (i. e., its gross assets of $4,339,519.57, less its liabilities of $731,273.81) were $3,608,345.76. But this company had among its gross assets a loan to the National Transit Company of no less than $3,710,000, an amount in excess of its actual net assets. This loan in the case of this company, as in others, represents money not needed in the actual business of the pipe-line company. The reason for this apparent absurdity of a company having net assets in its pipe-line business less than nothing lies in the fact that much the greater part of its plant investment has been written off for depreciation. The original cost of the plant (Petitioner's Exhibit 290) was $2,632,304.77, but depreciation had been written off out of the profits of the company to the amount of $2,284,257.42, leaving the net value of the plant on the books only about one-sixth of the original cost. It is quite probable that the amount of depreciation thus written off is greater than the actual depreciation, so that the true value of the assets is a positive and not a negative sum. But the company has reimbursed itself to that extent for its investment out of its earnings, and we can do nothing else than take the figures as they appear on the books. Even if a considerable value were assigned to the net assets of this company in the pipe-line business, it is still evident from the table above that its profits (and consequently its charges) are altogether excessive.

We may say further at this point that in the case of the United Pipe Lines division also depreciation has been written off to a most remarkable extent, although this company shows still a large amount of net assets in its pipe-line business. The value of the plant, as assumed by the company at the end of 1905, was only $116,813.92. (Petitioner's Exhibit 241.) The general balance sheet of the National Transit Company (Petitioner's Exhibit 115) shows that the original cost of the lines of the United Pipe Lines division up to that time had amounted to about $5,600,000, about 98 per cent of which had therefore been charged off for depre-

ciation. Even assuming that this depreciation charge is excessive, as it doubtless is, and that the true value of the plant is considerably greater than it appears on the books, the rate of profit of the United Pipe Lines division would still be altogether excessive.

The depreciation written off from the local lines of the Buckeye Pipe Line Company, Lima division, is also large, about 60 per cent of the cost, and were a smaller allowance made its rate of profit would appear somewhat less than shown in the table, but still very excessive. For the Indiana, Eureka and Buckeye, Macksburg division, the depreciation cuts comparatively little figure, being in each case less than 20 per cent of the original cost.

Taking the figures as they stand, it will be seen that the actual charges of the local pipe lines for transportation are in all cases far in excess of charges based on a reasonable return on the investment. The estimated reasonable charges on the 15 per cent basis range from 29.1 per cent to 74.2 per cent of the actual charges. Taking all of the companies together, the actual charge for transportation in 1905 was $10,401,725.68, of which no less than $7,872,237.47 represented profits on the investment. A reasonable charge, based on 15 per cent on the net assets for profit and depreciation, would have amounted to $4,441,772.62, or only 42.7 per cent of the actual charge, and on the average a reasonable charge for transportation per barrel would therefore be 42.7 per cent of 20 cents, or only 8.5 cents per barrel.

The Government was unable to obtain any account of the pipe-line business of the Ohio Oil Company, which operates gathering lines in the Illinois field, as well as a trunk line from the field. Moreover, the accounts obtained from the Prairie Oil and Gas Company, since they include the business of purchasing and selling crude oil as well as that of pipe-line transportation, do not show clearly the cost or the profit on the local pipe-line business or on the trunk pipe-line business of that company. The fair presumption, however, is that the pipe lines of this company are exceedingly profitable, although according to its method of accounting the business of the company as a whole has lost money, owing to the decline in the price of the stocks of crude oil it acquired in its earlier years.

IMPORTANCE OF THE STANDARD'S PIPE-LINE MONOPOLY.

From the foregoing summary of the evidence it is apparent that the Standard Oil Company has a substantial monopoly of the pipe-line business in the important oil fields of the United States. This monopoly and the abuse thereof are among the most powerful means employed by the Standard to maintain its monopoly of the purchase of crude oil and of the manufacture and sale of its products.

It appears that from the two large new oil fields, the Mid-Continent and the Illinois, the only pipe lines leading to the East are those of the Standard Oil Company. These pipe lines have filed no rates with the Interstate Commerce Commission, and have refused to act as common carriers, in violation of the law of Congress. The crude oil of these fields is much cheaper than that of the Pennsylvania and Lima-Indiana fields, and the Standard has practically the exclusive use of this crude for the supply of the greater part of the markets of this country and of foreign countries; so that it has a great advantage over all of its competitors. The eastern independent refineries, which include the largest number of independents, are at a particular disadvantage as compared with the Standard Oil Company, while the independent refineries recently established in or near the Mid-Continent field can evidently reach only a limited area in the distribution of their products, since they would have to pay rail freight rates on their finished products to the great markets of the North Central and Eastern States, as against the Standard's low cost of transportation by pipe line.

Furthermore, the failure of the pipe lines of the Standard in New Jersey and Maryland, leading to the Atlantic seaboard, to act as common carriers gives the Standard a further enormous advantage. Practically only the Standard can take advantage of the location of refineries at the seaboard. The possession of refineries at the seaboard is very important, owing to the fact that a large part of the refined oil of the lower grades can only be marketed profitably abroad. The Standard Oil Company, having control of the transportation of crude oil to the Atlantic seaboard, and having practically almost the only refineries there, is in a position absolutely to control the exportation of oil from

this country. This is shown by the fact that it controls about 90 per cent of the export trade.

Even, however, if all the pipe lines of the Standard acted as common carriers, the present rates are so excessive that they would practically prohibit the use of these lines by independent companies. In fact, the rates are substantially the same as the railroad rates, and it appears clearly in this case that independent concerns do not, and can not, to any considerable extent, pay railroad rates for the transportation of crude oil to their refineries.

The control of pipe lines has been, and is, therefore, an important item in the enormous monopoly which the Standard Oil Company has secured, and it is for that reason that it has, as we have shown, so vigorously sought to destroy all competition in the pipe-line business.

IV.

CONTRACTS BETWEEN THE STANDARD COMPANIES AND INDEPENDENT REFINERS AND PRODUCERS IN RESTRAINT OF TRADE.

It has been the policy of the Standard Oil Company wherever it could not purchase a competitor, or for some reason deemed it not advisable to do so, to limit his competition by the purchase of all of his manufactured product, or by contracts limiting his production, manufacture, or sale. When these contracts are considered as a whole, together with the testimony showing the enormous proportion of the business directly controlled by the Standard and its subsidiary companies, the attitude of the Standard Oil Company toward its competitors, its policy of buying out concerns competing with it and its methods of unfair competition, they show a general policy to restrain competition and to monopolize the oil business. We will now refer to some of the principal contracts and arrangements of this character.

CONTRACT BETWEEN THE STANDARD AND SIXTEEN REFINERS IN WESTERN PENNSYLVANIA FOR CRUDE OIL AND THE SALE OF THEIR EXPORT PRODUCTS.

It appears in this case that many independent refiners can get oil only by buying it from the Standard Oil Company. Some refiners have small pipe lines of their own and some others get their crude oil from the pipe lines controlled by the Pure Oil Company, but others have no way of getting it except through the pipe lines of the Standard Oil Company, and since the latter do not act as common carriers the refiners can not buy their oil at the wells and have it transported, but have to buy it directly from the Standard Oil Company. It appears that for several years prior to 1903 a number of refiners in western Pennsylvania (including one in Ohio), some sixteen in all, located at Coraopolis, Pittsburg, Warren, and various other places in western Pennsylvania, had been purchasing their supply of crude oil from

the National Transit Company and selling their refined product in the market. There are two principal grades of refined oil, one called Water-White, which is almost wholly sold for American consumption, and the other, a yellow-colored oil of a cheaper grade, known as Standard White or Prime White, or export oil, practically the only market for which is in foreign countries. These refiners had been selling this export oil largely through the independent Pure Oil Company, the same being transported through the latter company's pipe line to Philadelphia and thence exported. Some, however, had been sold through Crew, Levick & Company and the Union Petroleum Company, also independent concerns (Todd, vol. 6, p. 3211.)

The latter part of 1903 the National Transit Company reduced the amount of oil which it would furnish these refiners, and as a condition of continuing to sell them crude oil, required them to enter into a contract with the Standard Oil Company to sell to that company all of the export oil they produced, the Standard to take the same at the New York official export quotation for bulk oil. It has already been shown that this quotation is made absolutely by the Standard Oil Company. (Todd, vol. 6, pp. 3207–3211.) It is admitted in the answer that this contract was made. (Petition, vol. A, pp. 53–55, and Exhibit 15, p. 165; answer, vol. A, pp. 413–14.) It provides for the sale of 150,000 barrels of crude oil a month, divided among the 16 refiners.

This contract gave the Standard Oil Company the control of all the export oil at its own price and eliminated the competition of these refiners in the export business. The amount thus sold does not clearly appear. Mr. Todd states that as to his company, the Cornplanter Refining Company, it amounted to about 25 per cent of the crude run. If the same proportion of export oil were derived from the entire 150,000 barrels of crude oil obtained by all the refiners from the National Transit Company, the Standard would have had about 37,500 barrels (of 42 gallons) a month under this contract. Mr. Tilford, however, says that the export oil bought by the Standard from these refiners amounted to only 427 barrels a day. (Vol. 1, p. 176.) Refined oil being measured at 50 gallons to the barrel, this would amount to about 15,000 barrels of 42 gallons per month, or one-tenth of the crude

sale of 150,000 barrels a month. In any event, this arrangement eliminated the competition of these independent concerns in the export trade, and it certainly limited the competition of these refiners in the entire business by rigidly fixing the amount of crude they could buy.

Mr. Tilford admits that shortly before this contract was entered into the amount of crude oil which the National Transit Company sold to these refiners was reduced, and Mr. Todd states that they were thereby compelled to enter into this contract for the sale of export oil. (Tilford, vol. 1, pp. 139–143; Todd, vol. 6, p. 3208.)

CONTRACTS WITH THE PUENTE OIL COMPANY AND THE UNION OIL COMPANY, RESPECTIVELY.

It appears in this case that prior to the year 1900 the Standard Oil Company owned no refinery in California; that part of the refined oil and gasoline which it marketed in that State was shipped from its eastern refineries, principally Whiting, Ind., and the balance it purchased; that the Standard Oil Company of Iowa, until 1906, was the marketing company for the Standard's products in the Pacific coast States; that the principal competitors of the Standard's companies in California for refined oil and gasoline, before 1900, were the Pacific Coast Oil Company, the Union Oil Company, and the Puente Oil Company (petition, vol. A, pp. 58–59); that the Standard purchased the Pacific Coast Oil Company and entered into separate contracts with each of the two other companies, the contract with the Puente Oil Company limiting its manufactured product and providing for the sale thereof to the Standard Oil Company of Iowa, and the contract with the Union Oil Company providing among other things that that company should cease manufacturing refined oil.

The contract with the Puente Oil Company is set forth as Exhibit 17 to the petition (vol. A, p. 168) and its execution is admitted (answer, vol. A, p. 488), but it is denied that it was entered into for the purpose of suppressing competition or enabling the Standard Oil Company to monopolize the trade and commerce in oil in that territory. A reference to the contract will show that it was made on the 31st day of

March, 1898; that it limited the manufactured product of said refinery to 600,000 gallons of Water White, and 360,000 gallons of naphtha per annum, and provided for the sale thereof to the Standard Oil Company of Iowa. The contract was to run for a period of two years. It appears by the testimony of Mr. H. M. Tilford, president of the Standard Oil Company of Iowa, that it or a similar contract was in existence until about the year 1905. (Tilford, vol. 2, pp. 734, 735.)

In the case of the Union Oil Company the Government did not have a copy of the contract at the time the petition was drawn. The defendants therefore denied the execution of this contract in their answer. Mr. H. M. Tilford was first questioned about this on October 14, 1907. (Vol. 2, p. 735.) Subsequently, on the 15th of January, 1908, Mr. Tilford was again examined in relation to this contract. At this time the Government had a copy of the contract and it was shown to Mr. Tilford. He admitted there had been a contract by which the Union Oil Company was to sell to the Pacific Coast Oil Company certain crude oil and certain finished products. He stated that the original contracts in the office of the Pacific Coast Oil Company had been destroyed in the San Francisco fire following the earthquake, but he agreed to look up the matter, and a copy was furnished him at that time by the Government for this purpose. (Vol. 3, pp. 1465–1466.) Nothing more was heard from Mr. Tilford until he was placed on the stand by the defendants in the fall of 1908. Upon cross-examination he was again shown a copy of the contract, which is Petitioner's Exhibit No. 944. It appears that Mr. Tilford had in the meantime inquired for the original contract and received information that it was destroyed, and while from his testimony it is evident that he tried in every way to avoid admitting this contract, the testimony clearly shows that this is a copy of the contract entered into by the Union Oil Company. Among other things, he testified (vol. 17, pp. 3514, 3515):

> Q. Well, did the company enter into that contract?—A. The company had a contract with the Union Oil Company, and something on the lines which are indicated in that. I don't know whether that is the exact wording or not.

Q. Do you think that is a copy of the contract? What is your opinion?—A. I think it is something on the lines of that contract.

* * * * *

Q. Did the contract provide that the Union Oil Company would not manufacture refined petroleum, naphtha, benzine, gasoline, or distillate of a gravity lighter than 38 degrees Baumé, at temperature 60 Fahrenheit, within the county of Contra Costa, State of California? A. As I said, I never saw the original contract, but I think you may assume that something of that character was in it.

It appears that the refinery of the Union Oil Company was in Contra Costa County, Cal., and that it had no other refinery. (Tilford, vol. 17, p. 3525.)

Mr. Rosenthal, of defendants' counsel, was asked, at the time of this later testimony, if he would take a copy of the contract and find out whether it was an accurate copy and whether it was entered into. He said he would not unless we would withdraw it. This the Government declined to do; but the witness Tilford said if we would furnish him a copy he would investigate it. He was furnished a copy. Thereupon Mr. Rosenthal said (vol. 17, p. 3517):

> We are entirely willing that you may assume, for the purpose of any further cross-examination that you may wish to make of Mr. Tilford concerning this subject-matter (and for those purposes only), that such contract was entered into.

But he was unwilling to admit that it was a copy, because he did not know, and Mr. Tilford did not know, and they had not been able definitely to ascertain whether it was a copy or not, and claimed that the contract was entirely unobjectionable. The contract was introduced, and the defendants never furnished any further information about the subject.

It seems to the Government that this contract has been established. At any rate, Mr. Tilford admitted that a similar contract was made. The Union Oil Company was the owner of quite a large crude-oil production and of the refinery referred to. The contract is dated February 4, 1904, and provides that the Union Oil Company will sell the Pacific Coast Oil Company 150,000 barrels of crude oil each three months, or 600,000 barrels per annum, at the rate of 50,000 barrels a month; in consideration of this, and other considerations,

the Union Oil Company agreed not to manufacture any illuminating oil, naphtha, benzine, gasoline, or light distillate within the county of Contra Costa; and as it had no refinery in any other place, this was an agreement not to manufacture such products. That contract was to run for a period of two years or till 1906. Mr. Tilford admitted that this company was not manufacturing these articles until about two years before his testimony in 1908. (Tilford, vol. 2, p. 736.)

These two contracts eliminated the competition of the biggest refineries in California.

CONTRACTS WITH PRODUCERS OF CRUDE OIL IN CALIFORNIA LIMITING THEIR RIGHT TO SELL TO OTHER COMPANIES.

It is alleged in the petition and admitted in the answer that the Pacific Coast Oil Company entered into a contract with the Pinal Oil Company of Santa Maria on March 7, 1905, for the purchase of 1,000,000 barrels of crude oil, deliveries not to exceed 35,000 barrels in any month, and the Pinal Oil Company agreed that in case its production exceeded that amount it would offer the excess to the Pacific Coast Oil Company, which company might reject such offer, in which event the Pinal Oil Company agreed to store said excess oil on its property during the life of the agreement, and to sell the same to no other party. Contracts similar to this one were entered into with various other companies in California, to wit: the Western Union Oil Company, the 28 Oil Company, the 40 Oil Company, and the Oil City Petroleum Company. It will be seen that these contracts prevented the producers from selling their surplus to any other company. (Petition, vol. A, pp. 59–60; ans., p. 417.)

CONTRACTS WITH THE TIDEWATER OIL COMPANY, FLORENCE OIL AND REFINING COMPANY, UNITED OIL COMPANY, AND OTHER COMPANIES.

It appears by the testimony in this case, more specifically stated in another part of the brief (pp. 68 to 74), that the Tidewater Oil Company is one of the principal concerns in the business outside of the Standard and owns the only other pipe line from western Pennsylvania to the New York harbor; that it previously for many years had a contract

with the Standard companies whereby it divided the business of purchasing, transporting, manufacturing, and selling petroleum and its products; that while this contract was canceled at the time the Sherman Act was passed, it has practically been carried out since, and the business of the Tidewater Company has never been increased. And it further appears that under contract arrangements the Standard sells the Tidewater a large part of the crude oil that company consumes, and markets 95 per cent of the Tidewater's domestic refined oil and about 77 per cent of its export oil, the balance of the latter being so marketed as virtually not to compete with the Standard product. The Standard also owns over 30 per cent of the Tidewater's capital stock. Accordingly, this company is not a competitor, but is prevented from competing by contracts and agreements in restraint of trade.

It also appears that the Standard by contractual arrangements purchases and markets all of the manufactured product of the Florence Oil and Refining Company and the United Oil Company of Colorado, which are practically the only refiners of crude oil of the Colorado field; that the Standard owns 17 per cent of the stock of the latter company; and that in the district where these companies would naturally sell their oil the price is extremely high and the Standard has almost an absolute monopoly, the per cent of competitive oil sold in this district varying from two-tenths of 1 per cent to a little over 1 per cent, according to years. There is testimony that parties connected with the United Company undertook to establish another refinery known as the Rocky Mountain some years ago; that a violent price-cutting competition started in between the Standard's marketing company, the Continental, and this company, and that the Rocky Mountain Company failed and went out of business. This appears by the testimony of Mr. Tilford (vol. 1, pp. 154–156). It also appears that the marketing of oil in this territory is extremely profitable, and in all probability, but for the fear of the Standard, the United and Florence companies would be substantial competitors.

Testimony has been offered and we believe establishes the fact, that the Standard owns the Security Oil Company and the Corsicana Refining Company of Texas; this testimony is

analyzed at length in vol. 1 of our brief (pp. 98–102 and 115–118.) But whether it does or not, it appears undisputed that the Standard has arrangements with these companies by which it markets their entire product and furnishes the Security all the crude oil it uses; that, therefore, any competition of these companies is entirely eliminated. It appears also that in this Texas territory the profits of marketing companies are very large, ranging in many towns from 3 to 7 cents a gallon.

These various contracts and arrangements are mentioned in this connection, because by these means and others the Standard markets substantially 90 per cent of all of the refined oil and gasoline manufactured in the United States. These contracts are strong evidence of a monopoly. The only possible reason why these various companies (except perhaps the Security and Corsicana) should not market their own product is the fear of ruinous competition by the Standard Oil Company. As manufacturing concerns their position in this respect is unique. It is certainly remarkable to find one manufacturing company controlling the output and marketing the supply of others engaged in the same business.

We shall not undertake to present the other cases appearing in the testimony in which the Standard Oil Company and its affiliated concerns, particularly during the earlier years of the petroleum industry, entered into restrictive contracts with competitors. A considerable number of such cases have been brought out, such for example as the contracts of 1876 between the Standard and the firms of Scofield, Shurmer & Teagle and the Pioneer Oil Company, refiners of Cleveland, respectively, for the limitation of their volume of business (Petitioner's Exhibits 1002 and 1003; and particularly the affidavit of John D. Rockefeller, Petitioner's Exhibit 1006, vol. 21, p. 189); the contracts for the lease of refineries at Pittsburg to the Standard about 1878, such refineries not being operated during part of the period of the lease (Irwin, vol. 6, p. 3014; Emery, vol. 6, p. 2630); the lease of the Argand Refining Company of Marietta to the Standard about 1898, which refinery also was not operating during the period of the lease (Archbold, vol. 17, p. 3337); and the lease of the refinery of McGoey & King at New York about 1880, which also was closed down during at least part of the time of the lease (Archbold, vol. 17, p. 3650).

V.

REBATES, SECRET RATES AND RAILROAD DISCRIMINATION AS AN AID TO MONOPOLY.

EARLY REBATES AND DISCRIMINATIONS.

From 1872 to 1882 the Standard Oil Company and the others associated with it in this combination, were favored by rebates, preferential rates, and discriminations extended to them by the railroads, while outside concerns were charged the full rates. This discrimination was so remarkable that the independent refiners and the crude-oil producers held public meetings throughout the oil regions, petitioned the legislature of Pennsylvania and Congress, besought the railroads to grant them equal rates, and in every way endeavored to obtain relief from this oppressive condition, but without avail. The result was that all of the leading refiners joined in the combination, and most of the balance were crushed out and their refineries dismantled.

The first conspicuous case of rebates in favor of the Standard interests was in connection with a concern known as the South Improvement Company. It is true that after the exposure of the contracts which this company entered into with the railroads for rebates its charter was repealed by the legislature, but the scheme was in substance afterwards carried out, and it is therefore proper to here state with some detail the history of this company, as it was the first step in the scheme of combination.

SOUTH IMPROVEMENT COMPANY.

The South Improvement Company was organized in 1871, using an old charter. The capital stock was divided into 2,000 shares, and was subscribed for as follows:

	Shares.
William Frew	10
W. P. Logan	10
John P. Logan	10
Charles Lockhart	10
Robert S. Waring	475
W. G. Warden	475
O. F. Waring	100
P. H. Watson	180
H. M. Flagler	180
O. H. Payne	180
J. A. Bostwick	180
William Rockefeller	180
John D. Rockefeller	180

All of these stockholders, with the possible exception of the Warings and Logans, were at this time, or became shortly after, in the course of this first combination, stockholders of the Standard Oil Company. (Petition, vol. A, p. 13; answer, vol. A, p. 476; John D. Rockefeller, vol. 16, pp. 3139, *et seq;* Defendants' Exhibits 386, 387.)

On January 18, 1872, this company entered into a contract with the Pennsylvania Railroad. (Exhibit 2 to petition, vol. A, p. 116.) It is admitted (ans., vol. A, p. 476) that this contract was entered into, but it is averred in the answer that it never went into effect or became operative, and that no oil was ever shipped thereunder. It is doubtless true that this particular contract was not regarded as in effect after the repeal of the charter of the South Improvement Company, but the contract itself shows the purposes and plans of the South Improvement Company, which were afterwards, in effect, carried out between the railroads and the Standard Oil Company. The testimony is very clear that rebates substantially equal in amount to those provided in this contract were subsequently paid and divisions between the railroads made, which rebates and discriminations were continued until Rockefeller and his associates had forced the principal refiners into the combination.

Let us briefly examine this contract. While it is made with the Pennsylvania Railroad, the scheme included all of the railroads, for in the first part of the contract it recites an agreement between the Erie Railroad and its connections, the New York Central Railroad and its connections, and the Pennsylvania Railroad, for the division of business, 45 per cent to the Pennsylvania, 27½ per cent to the Erie, and 27½ per cent to the New York Central.

The first article provides that the South Improvement Company is to furnish the Pennsylvania Railroad sufficient transportation of crude petroleum and its products, "owned or controlled by the party hereto of the first part, as shall give to the party hereto of the second part 45 per cent of all the crude petroleum and its products sent from the points of production and refining toward the Atlantic coast by the said Pennsylvania, the Erie, and the New York Central railroads and their connections, and 33⅓ per cent of that which

is sent west of Pittsburg and Cleveland by those railroads and their connections."

The contract fixed a schedule of freight rates to be charged to all parties and of rebates to be paid to the South Improvement Company, not only on the oil shipped and controlled by that company, but on all oil transported by others, and provided in substance that all other parties should pay the full rates. A schedule of said rates of transportation, of the rebates and drawbacks, and of the percentage of such rebates and drawbacks follows:

ON CRUDE PETROLEUM.

	Gross rate per barrel.	Rebate or drawback per barrel.	Per cent of rebate.
From "common points" on Oil Creek and Allegheny River Railroad to—			
Cleveland	$0.80	$0.40	50.0
Pittsburg	.80	.40	50.0
New York	2.56	1.06	41.4
Philadelphia	2.41	1.06	44.0
Baltimore	2.41	1.06	44.0
Boston	2.71	1.06	39.0

ON REFINED OIL, BENZINE, AND OTHER PRODUCTS OF THE MANUFACTURE OF PETROLEUM.

From Pittsburg to—			
New York	$2.00	$0.50	25.0
Philadelphia	1.85	.50	27.0
Baltimore	1.85	.50	27.0
From Cleveland to—			
Boston	2.15	.50	23.3
New York	2.00	.50	25.0
Philadelphia	1.85	.50	27.0
Baltimore	1.85	.50	27.0
From any "common point" to—			
New York	2.92	1.32	45.2
Philadelphia	2.77	1.32	47.7
Baltimore	2.77	1.32	47.7
Boston	3.07	1.32	43.0

It was also provided in the contract, in addition to the foregoing rebates, that—

From the gross rates to and from all points intermediate between the above points a rebate or drawback of one-third of the gross rate shall be paid.

> From the gross rates from Pittsburg, Cleveland, and other points to places west of the meridians of Pittsburg and Cleveland a rebate or drawback of one-third of the gross rates shall be paid.

Many of the provisions of this contract are so remarkable that we quote them herein at length. It was, among other things, provided that all other parties should be charged the full rate. Section 5 provides that the railroad is—

> To charge to all other parties (excepting such as are referred to in article 3) for the transportation of petroleum and its products rates which shall not be less than the gross rates above specified; and should at any time any less rate be charged, directly or indirectly, either by way of rebate, commission, allowances, or upon any pretext whatsoever, the same reduction per barrel shall be made to the party hereto of the first part from the net rates provided for them on all transportation for them during the period for which such reduction shall be made to others.

The parties "referred to in article 3" who were excepted were any other parties who could furnish an equal amount of transportation, etc. This provision of the contract is as follows:

> And it is hereby further covenanted and agreed by and between the parties hereto that the rebates hereinbefore provided for the party hereto of the first part may be made to any other party who shall furnish an equal amount of transportation and who shall possess and use works, means, and facilities for carrying on and promoting the petroleum trade equal to those possessed and used by the party hereto of the first part.

So that no other shipper than the South Improvement Company could obtain the rebates and drawbacks provided for in this contract unless he should furnish the same amount of oil for transportation, and in addition should possess the works, means, and facilities for carrying on and promoting the petroleum trade, equal to those possessed and used by the South Improvement Company. There were no other shippers who had equal facilities or who could furnish an equal amount of oil. This is apparent from the testimony of Mr. Archbold, Mr. Rockefeller, and others who described the combination, and from the publication which was made at that time by the concerns who organized

this combination, to wit: Warden, Frew & Co.; Waring, King & Co., Logan Brothers & Co., Standard Oil Company, and J. A. Bostwick & Co. It was there said that the parties who represented the stock of the South Improvement Company "are connected as part owners in the largest refining interests in this country, and that two-thirds of the entire refining capacity had been pledged in this enterprise." (Vol. 6, p. 2623.)

Again, it was provided that the railroad companies were to cooperate as far as they legally could with the South Improvement Company, to maintain the business of the party thereto of the first part against loss and injury by competition, and that they would lower and raise the gross rates of transportation so far as they legally might "for such times and to such extent as may be necessary to overcome such competition." (See art. 4 of contract, vol. A, p. 122.) Here we have a contract in which the railroads agree to protect the South Improvement Company against competition and to raise their rates (of course, to the independents) and to increase accordingly the rebates to the South Improvement Company in order to prevent competition with this combination.

This contract was to run for a period of five years.

Although the defendants put in evidence to show that the charter of this corporation was revoked, we shall show later that substantially the scheme provided in this contract was actually carried out by the Standard interests and the railroads. Moreover, this very contract itself was made a means of driving a large number of independent concerns to sell out to the Standard Oil Company. The contract had provided for an increase of the open rates on oil, and this much, at least, of it was actually carried out immediately. Within eight days after the contract was made between the South Improvement Company and the Pennsylvania Railroad freight rates were advanced nearly 50 per cent, and these rates were not lowered when the charter was repealed. (Emery, vol. 6, p. 2616; Lombard, vol. 1, pp. 247–248.)

The first information that reached the oil regions concerning the South Improvement Company was knowledge that some kind of a rebate contract had been made with the railroads. The nature of the contract was not fully understood,

but the refiners in the oil regions vaguely knew that something had been accomplished which was of vast importance to the oil interests. Mr. A. P. Bennett was sent from Titusville to Cleveland to investigate the rumors in reference to this company. He returned with the information that a contract with the railroad companies had actually been made and that the South Improvement Company was a fixed organization. (Emery, vol. 6, p. 2613.)

There was intense excitement throughout the oil region, which manifested itself in public meetings at various places. The first meeting was held at Tidioute on the 24th of February, 1872. At this meeting the refiners present discussed the situation and the proposed control of the oil business by the South Improvement Company. Two days later a meeting was held at Titusville, at which there were over three thousand people present, and among them refiners from Cleveland and elsewhere. On the 29th of February a meeting was held at Oil City, which was the largest meeting held in the oil regions during the time of this excitement. At this meeting the refiners came from Pittsburg and all other places where the independents were located. At the Oil City meeting a committee was appointed to investigate the whole matter, and also for the purpose of building a railroad from Erie, Pa., to Buffalo, N. Y., so that oil might be shipped to Buffalo, and from there by canal to the seaboard, without using the railroads that had become parties to this contract. Another committee was appointed to go to Harrisburg and procure, if possible, the repeal of the charter which was accomplished on the 18th of March. A committee was also sent to Washington to get Congress to investigate into the methods of and the probable control of the oil business by the South Improvement Company. Congress did investigate the matter. This investigation continued after the repeal of the charter, and was not concluded until the 9th of April. Mr. Emery gives a graphic description of these meetings and the effect of the organization of this company, in his testimony (vol. 6, pp. 2610 *et seq.;* see especially pp. 2616–2625).

Mr. Archbold, who was then an independent refiner, was one of the most vigorous opponents of this contract, and he

testified in this case to his opposition as follows (vol. 17 p. 3447):

Q. You remember you testified about these rates in the very early days. You remember the South Improvement Company contract, don't you?—A. I do remember the South Improvement Company contract.

Q. And you were one of the most violent opposers of that contract, were you not?—A. I was.

* * * * *

Q. You denounced that contract in public meetings in western Pennsylvania, didn't you?—A. I did.

Q. As an outrage on the independents, didn't you?—A. Well, as an outrage on the business as a whole that was not included in it.

Q. Yes; that is what I thought.—A. Yes.

Q. It was a very good thing for those that were included in it?—A. I do not know whether it would have been or not, I am sure.

Q. The features of that contract that you denounced were what features?—A. Well, I denounced its exclusiveness.

Q. That rebates were to be paid to shippers under that contract?—A. Well, the exclusive nature of the contract I denounced most vigorously.

Q. What do you mean by the exclusive nature of it?—A. The fact that it provided that the rates should be given to the people named in that contract and not to others.

Q. And that the others should pay the full rates?—A. And that the others should pay the full rate; yes.

* * * * *

Q. Well, you denounced the exclusiveness of it?—A. Yes, sir.

Q. Explain a little further what you mean by that.—A. I mean that I did not approve of the contract as a whole, in that I considered it impractical and unfair, and that whatever the intentions of the people who originated it were as to including everybody, as they said, that it could not be practically done, and that it ought not to go into operation.

Q. You didn't understand that it was made for the benefit of your company, did you?—A. I did not until I had denounced it. I was told later that we might be included, but I didn't want to go in on it.

The indignation in the oil region and the bitter opposition stirred up caused the repeal of the charter, but it will be seen

that the organizers did not stop their endeavors to carry out the scheme, and the latter part of March and the first of April the refining companies back of this enterprise published a manifesto in the Pittsburg, Cleveland, Oil City, and New York papers and others. This manifesto was produced by Mr. Emery and appears in the record. (Vol. 6, p. 2619 et seq.) We call attention to some of the features of the same. It is signed by Warden, Frew & Co., Waring, King & Co., Logan Brothers & Co., Standard Oil Company, and J. A. Bostwick & Co., every one of which shortly thereafter, as we will see, became identified with or sold out to the Standard Oil Company. Mr. Rockefeller says he thinks this was the Standard Oil Company of Pittsburg, which was not then controlled by the Standard Oil Company of Ohio; but this seems most improbable in view of the facts that Warden, Frew & Co., who controlled the Standard of Pittsburg (see Rockefeller, vol. 16, p. 3080), themselves signed the manifesto, and that the stockholders of the Standard Oil Company of Ohio held a large block of stock in the South Improvement Company. It appears that all the stockholders of the latter company (except P. H. Watson) were identified with one or the other of the five concerns which signed the manifesto—assuming that it was the Standard Oil Company of Ohio which signed it. That it was the Standard Oil Company of Cleveland is evident, also, because the independent refiners only obtained accurate information about the South Improvement Company on going to Cleveland, where the real seat of the conspiracy was. (Emery, vol. 6, p. 2613.) It will be noted that Mr. Rockefeller does not testify he knows it was the Standard of Pittsburg.

The heading of this manifesto is as follows:

[ADVERTISEMENT.]

THE OTHER SIDE.

WHAT THE SOUTH IMPROVEMENT COMPANY PROPOSE TO DO.

Official Manifesto of the Aims and Objects of the Association—The Company Pledged not to Speculate, and Organized for the Best Interests of the Trade, Etc., Etc.

We call attention to a few of the statements in this manifesto:

The competition made by selling in the East has been instrumental in cutting down freight to such an extent that railway interests connected with this business have suffered greatly, carrying oil, as they have been doing, for less than cost.

* * * * *

Feeling and believing this condition of affairs has been gradually eating up the life and means of the refining interests, some of those most heavily engaged in the business met to consult as to what could be done to prevent the foreseen results of such a course, and to bring prosperity to all our interests.

We propose to carry out designs and intentions somewhat as follows: We were satisfied that, for the general good of all, our refineries should be united, having about 35,000 barrels daily capacity, when only 16,000 to 17,000 were required. The mass of refineries, in their struggle to live, prevented even those most favorably located from making any profit from legitimate manufacturing.

We therefore determined that our first efforts should first be to unite all these refineries in a general stock company, in which each would have the full benefit according to the value of the property put in, and none, even the most unfavorably located, could say that they had been left out and that their property was destroyed by our action.

* * * * *

We also believe that the railroad, or no other power, would be justified in giving rates that would build up a few and crush out the mass of manufacturing establishments that had been built upon their lines of road, under their assurance of protection.

* * * * *

In making our arrangements with the railroads, it was understood that the "South Improvement Company" would give an opportunity to all the refineries to come in on equal terms, and that the producing interest should be fully protected about somewhat as follows: We were to have a manufacturing profit of 50 cents per barrel when crude was down to and below $4 per barrel, and $1 per barrel when it was up to and above $5 per barrel. Good reasons why drawbacks and rebates should be given were:

1. The refining interest of this country might be protected from the exportation of crude oil, and secure a

fair remuneration for their capital and labor by stopping speculation.

* * * * *

We also believe the rates of freight should be so adjusted that the producers at all points should receive the same price for their oil at the wells, so that it might be refined as favorably at each refining center.

With our rebates for protection, none could break the price of refining without great loss, unless the producer sold his crude at from 50 cents to $1 per barrel below the price we were paying him, and this he would not be likely to do as long as he could get an advance of $3 per barrel on it.

* * * * *

Before we had our organization and railroad contracts completed, the people in the oil regions had commenced to call meetings, and would not listen to any request we made to appoint a committee to meet us, and the public speakers fired the minds to such a state that it was useless to stem the torrent as long as we held the railroad contracts in our hands, so that after the meeting on the 25th of March we determined to cancel them.

We believe yet that some such course as we proposed to adopt will be found necessary to save our refining interests from great loss and destruction, and to save our country millions of dollars.

* * * * *

We would state that these who represented the stock of the "South Improvement Company" only did so until the refineries could be appraised and the stock increased and distributed among the various owners of the property, but these persons who represented the stock are connected as part owners in the largest refining interests in this country, and that two-thirds of the entire refining capacity had been pledged in this enterprise.

A part of this advertisement is a letter, dated Philadelphia, March 18, 1872, written by the signers of the advertisement to J. Edgar Thompson, president of the Pennsylvania Railroad Company, reading as follows:

DEAR SIR: We hear a great many rumors in regard to the proposed monopoly of the "South Improvement Company" and that such misrepresentations have been made to you as seriously affect its interests. We therefore request your attention to the following facts:

That the "South Improvement Company" have several times agreed to meet committees of the producers to adjust and fix some way by which cooperation could be had.

That they offer to *all* refiners and are ready to take them in on just as favorable terms and conditions as any now in the company.

(This proposition has been made to refiners in the oil regions.)

They will now propose through your good offices to submit some plan by which this object can be effected and are prepared to meet a committee of the producers and refiners for this purpose, or will submit a proposition to them in writing through any acceptable channel.

They will make the ground or basis of such proposition the giving of the producers and all the refiners the full benefit of their charter and of their contracts with the railroad companies on equal terms with themselves.

We wish to be understood as expressing the views and resolved purposes of the "South Improvement Company" as we have always understood them to be.

Respectfully signed.

WARDEN, FREW & Co.
WARING, KING & Co.
LOGAN BROTHERS & Co.
STANDARD OIL COMPANY.
J. A. BOSTWICK & Co.

As we have seen, this manifesto was after the repeal of the charter and was an effort by the parties to justify the South Improvement contract. Mr. Rockefeller claims that he had very little to do with the contract, did not believe in the South Improvement scheme at the time, and that it never went into effect. The facts do not justify his statement. In spite of his want of knowledge about this contract he proceeds in his testimony to justify it, and says that it was not correctly understood by everybody at the time. (Vol. 16, 3145.) His justification sounds remarkably like this [illegible]ment of 1872, the substance of it being that the South Improvement Company was intended to take in all the refineries, which, were it true, would mean that it was intended to be an absolute monopoly as against the consumer. He says, among other things: "The doors were opened to everyone to come in." He was asked—

> But what would become of the refiner who did not care to consolidate his properties into this agreement?—A. I could not state about that.

Q. He could not possibly do business in competition with these refiners, with a rebate against him of that amount, could he?—A. He could come in.

Q. Suppose he could not come in?—A. Well, the doors were open for him to come in.

Q. How do you know the doors were open for him to come in?—A. Because that was the theory of the gentlemen who organized it and tried to carry our confidence and support of it, that it would be generally beneficial in its character and would be a popular measure.

Q. Did you intend to take into the South Improvement Company all of the refiners in the district?—A. I think that all of the refiners were expected to come into it.

And yet Mr. Rockefeller admits that during this time, between the first of January and March, he bought up practically all the refineries at Cleveland and never disclosed to one of them that they would have an opportunity to participate in this contract. (Vol. 16, pp. 3146–3147.)

He seems to think it was strange that the producers of crude oil got excited. When asked what it was that caused such excitement, he said that it was some misapprehension in regard to the affair. (Vol. 16, p. 3141.) In his testimony in relation to this contract, Mr. Rockefeller, on direct examination, said (vol. 16, p. 3071):

Q. It aroused great opposition?—A. It did; yes, sir.

Q. And with what result? It was abandoned?—A. Oh, it was abandoned at once, right away. The exact time of that I could not state.

Q. The feeling and opposition to it was on the part of the oil interests in Pennsylvania?—A. Yes, sir.

Q. And it grew all at once into a very marked opposition?—A. Oh, very pronounced, yes. It did not take our good friends down there, who produced the oil, very long to arouse themselves on any subject. They had the characteristics of miners the world over. That was the case.

We are not at all surprised that such was the case. Both Mr. Rockefeller and Mr. Archbold testified that rebates and discriminations were common in those days, and yet Mr. Lee, Mr. Emery, Mr. Lombard, Mr. Cassatt, and various other witnesses testified that the independents did not receive the rebates, and certainly it was not such a common thing as to go unnoticed, for it not only aroused the great

indignation of the independents, but it destroyed their business.

The effect of this combination, started with the South Improvement Company and continued by Mr. Rockefeller and his associates, is graphically described by Mr. Lewis Emery (vol. 6, pp. 2609 *et seq.*); Mr. Lewis Irwin (vol. 6, pp. 3009 *et seq.*); and Mr. J. W. Lee (vol. 6, p. 3150).

GENERAL CHARACTER AND EXTENT OF EARLY REBATES.

While, therefore, the South Improvement rebate scheme did not go into direct operation, the men who had been instrumental in organizing it, did subsequently, in substance, accomplish the same objects.

We wish here to give a synopsis of the testimony which we believe will prove beyond question that the enormous rebates and discriminations which the Standard Oil combination received between 1872 and 1882 were the principal instruments by which it was enabled to acquire its control over so many refineries and to crush out its competitors. It is of course difficult at this date to prove by direct oral evidence the payment of such rebates. We have, however, considerable such direct evidence, especially from the defendants themselves, and we also have written contracts and proof that they were carried out, which show beyond question not only that the Standard Oil combination received enormous rebates on its own oil, but also upon the oil of its competitors.

It may be claimed that this evidence relates to a period too remote. The defendants, however, rely upon the early organization to justify the legality of the combination of 1882 and of 1899. Mr. Rockefeller and Mr. Archbold both testified in this case; neither one denied the receipt of rebates by the Standard Oil Company. It is evident from their examination that they had made the most careful preparation in studying the early history to testify about details which would aid in their defense.

It is quite remarkable that neither one denied the payment of such rebates during this period, although in general they claimed that they had no specific recollection regarding them. In fact, their only defense was the claim that rebates were being paid generally in those days on all classes of business

and to other oil refiners as well as to the Standard interests. It is a remarkable fact that neither Mr. Rockefeller nor Mr. Archbold could name any independent concern which had received rebates, except that Mr. Archbold claimed that a group of concerns which he represented had received some before he joined the combination; he failed, however, to specify the amounts or to give any details. When we remember that the railroad discriminations in favor of the Standard interests were investigated by various committees of Congress and of state legislatures and by the courts at various times from 1879 to the present date, and that about 1879 Mr. Rockefeller and his associates were indicted and suits brought to oust one of their companies, the United Pipe Lines, from the State of Pennsylvania for entering into a conspiracy to receive rebates from the railroads, it is very significant that in none of these investigations was definite evidence presented of the payment of rebates to competitors of the Standard Oil Company. It is needless to say that had such evidence been presented in those cases and investigations the defendants in the present case would have refreshed their memory therefrom and presented the facts in their defense.

The railroad discriminations during this first period mostly took the form of direct rebates, but included also the grant of control of railroad terminal facilities to the Standard interests and other concessions and advantages.

Lewis Emery, who in the early days had a refinery at Oil City and later at Philadelphia, testified directly not only to the discriminations in favor of the Standard Oil Company but to the effect of particular contracts, to which we shall hereafter refer. He testified that the giving of rebates absolutely paralyzed all the refineries along Oil Creek in 1875 (vol. 6, p. 2639); that he knew of these facts from the contract itself and from experience in the destruction of his own business and the continual growth of the opposition business; that he could not procure these rebates and was compelled to sell out to Charles Pratt & Co. in 1876, who dismantled his refinery. (Vol. 6, pp. 2640–2641 and 2724–2726.)

It appears that about the beginning of 1880 the Pennsylvania Railroad Company settled the suits that were pending against it in the State of Pennsylvania arising from its rebates to Standard interests, which we shall hereafter refer to, and made an announcement that thereafter the rates would be equal to all parties. Thereupon Mr. Emery, in connection with his partners, under the firm name of Logan, Emery & Weaver, constructed a refinery in Philadelphia and for some time transacted a profitable business, when the Pennsylvania Railroad Company declined to furnish cars, although they were furnishing cars to the Standard Oil Company and had cars idle. Logan, Emery & Weaver then found it impossible to obtain crude oil to operate their refinery, and were again compelled to sell out to the Standard Oil Company for $275,000, their refinery having cost them $350,000, it being a modern, first-class refinery. This refinery was dismantled. (Vol. 6, pp. 2644–2646.)

Mr. Lee, a lawyer living in the oil regions, who was formerly a partner of Mr. Dodd (for many years general counsel of the Standard Oil Company), and who for many years was familiar with transportation problems, testified that between 1878 and 1887 the Standard Oil Company and its subsidiary companies got concessions from the railroads and secured rates better than the independents could get, and that he never knew or heard of rebates or concessions in favor of independent concerns. (Vol. 6, pp. 3181–3182.)

Mr. Josiah Lombard, who up to the time of his death recently was connected with the Tidewater Oil Company, testified in this case. The Standard Oil Company owns a large interest in the Tidewater Company, and their relations are very close (see pp. 68–74, *ante*). It will not be claimed that Mr. Lombard was an interested witness or in any way prejudiced. He was one of the early refiners, a member of the firm of Lombard, Ayres & Co., and thoroughly familiar with the refining business from the earliest date. He testified (vol. 1, pp. 251–255) that in 1877 he applied to Mr. Cassatt, vice-president of the Pennsylvania Railroad, to obtain rates equal to those of the Standard Oil Company, and that Mr. Cassatt told him that the railroad

would not give him or the other independent shippers the same rates as the Standard Oil Company. He was informed that they must unite with the Standard Oil Company. On page 254, volume 1, Mr. Lombard testified:

> Q. Was there anything said in that conversation about your uniting your interests with the Standard?—A. He urged us to do it.
>
> Q. Now, tell us what he said, as near as you can.—A. I can't remember the exact words, but it was to this effect: That if we would unite with the Standard, everything would be harmonious and pleasant.
>
> Q. Well, "unite" with them?—A. Join with them.
>
> Q. Explain what he meant by that.—A. I suppose he meant go in with them, in business with them; associate ourselves with them.
>
> Q. What did you say to him in reply to that?—A. We didn't want to do it.

He testified (p. 254) that subsequently to this he undertook to procure cars from the Pennsylvania Railroad and that he was denied cars, Mr. Cassatt telling him that they could not furnish them, as they did not have enough, but he found that they had some 500 cars standing idle in Philadelphia. Later, in 1878, he and his associates had an interview with Mr. Cassatt and Colonel Scott, president of the Pennsylvania Railroad, and offered to build cars of their own if the Pennsylvania Railroad Company would transport them, which Colonel Scott declined to do. Colonel Scott also urged them to unite with the Standard Oil Company, and said "if we would unite with the Standard, everything would be in good shape." (Vol. 1, pp. 255–256.)

Mr. Lombard also testified that he afterwards applied to Mr. Rutter, of the New York Central, for 100 cars, but he did not procure them; that he also applied to the Erie, but was told that their cars were all engaged by Charles Pratt & Co. (Vol. 1, pp. 256–257.) He testified that they were then compelled to ship their oil around by Buffalo and to build canal boats for transporting it by canal to the East. This proved unsatisfactory, owing to the canal being frozen during the winter, and they finally joined with others and built the Tidewater Pipe Line, the history of which enterprise we have reviewed (see pp. 69–70, *ante*).

Prior to the consolidation of various refineries in Baltimore into the Baltimore United Oil Company and the acquisition of its stock by the Standard Oil Company, Mr. Farquharson was employed by C. West & Sons, one of the concerns which afterwards went into the Baltimore Oil Company. He testified that before the consolidation West & Sons paid $1.35 a barrel freight on crude oil to Baltimore, and that after the acquisition by the Standard interests he learned from William C. West, general manager of the Baltimore United Oil Company, that 65 cents of this had gone to the Standard Oil Company. This evidence is undoubtedly competent, because Mr. West and Mr. Farquharson were both employees of the Baltimore United Oil Company, one of the parties to the conspiracy controlled by the Standard combination, and this statement of West's was made after such control had been established and after he became vice-president and general manager of the Baltimore United Oil Company. (Farquharson, vol. 5, p. 2218.)

Mr. Archbold testified on February 20, 1879, in the case of *Commonwealth* v. *Pennsylvania Railroad* (see Record, vol. 6, pp. 3237–3239), that out of a rate of $1.29½ on refined oil from Titusville to Philadelphia there was rebated to the Acme Oil Company, a Standard concern, 63 cents; in other words, that they paid a net rate of 66½ cents. Mr. Archbold produced a statement and handed it to Mr. Acheson, the attorney, and was asked the following question:

> Q. Will you read it?—A. Yes, sir. The export business for the month of October shows a shipment to Philadelphia of 10,642 barrels of refined oil, which was billed at a rate of $1.29½, from which there was rebated a total allowance of 63 cents. During the month of November there were shipped to Communipaw, New Jersey, 23,242 barrels of refined oil, which was billed at the rate of $1.44½, from which there was a total allowance of 64½ cents per barrel.
>
> The MASTER. Shipped from Titusville?
>
> WITNESS. Yes, sir.
>
> Q. You say that your company had a freight arrangement for transportation over the Pennsylvania road for the month of October, made with Warden, Frew & Company. With what member of that firm was that arrangement made?—A. Mr. Warden.
>
> Q. William G. Warden?—A. Yes, sir.

Q. Is he, sir, a stockholder in the Standard Oil Company of Cleveland, Ohio?—A. I think, to the best of my knowledge, he is.

Q. He is also a stockholder in the Standard Oil Company of Pittsburg, is he not?—A. I do not know.

* * * * *

Q. What was the open rate of freight at that time?—A. Well, the open rate of freight was as I have stated there.

Q. Give us the figures, please.—A. $1.29½.

Q. Well, your arrangement with William G. Warden was what, in respect to freight—what were you to pay?—A. We were to pay the rate as shown on that statement.

Q. What is that?—A. 66½ cents.

Q. And was that all you did pay?—A. That is all we did pay.

Q. Now, you speak of the open rate being $1.29½?—A. Yes, sir.

Q. Wasn't it $1.75?—A. $1.75, from which was rebated the cost of getting the oil to the refineries, amounting to 45½ cents, which was published to the world.

Q. The open rate being as you have explained it, $1.29½, you paid 66½ cents?—A. Yes, sir.

Q. Who got the allowance, Mr. Archbold, of 63 cents?—A. The Acme Oil Company.

Q. Who participated with the Acme Oil Company in that 63 cents a barrel?—A. The stockholders.

Q. Was there any division of it except among the stockholders of that company?—A. None whatever.

Q. State, sir, who of the stockholders of the Acme Oil Company are stockholders in the Standard Oil Company; whether they all are.—A. No, sir; they are not all, and I could not state positively who are.

Q. Who, to your knowledge, are?—A. William G. Warden certainly is, and William Rockefeller. I would not go further than that of positive knowledge. That is, I speak so positively of William G. Warden, I have every reason to believe he is a stockholder in the Standard Oil Company.

Mr. Archbold, on cross-examination in this case, was asked if he so testified in 1879, and said that he did not remember. (Vol. 17, p. 3456.) This evidence, however, is competent, because Mr. Archbold is one of the co-conspirators and signed the trust agreements of 1879 and 1882, and the Acme Oil Company and Warden, Frew & Co. were then a part of the Standard combination.

This rebate of 63 cents and 64½ cents, respectively, about which Mr. Archbold testified, is stated by Mr. Cassatt in his testimony, given also in 1879, to have applied to all the Standard companies. Mr. Cassatt's testimony is competent as that of a co-conspirator. He was vice-president in charge of traffic of the Pennsylvania Railroad; that company had contracts, as we will see, with the Standard Oil Company for the payment of rebates, and within the rule Mr. Cassatt's testimony is competent as a declaration against his co-conspirators. (Cassatt, vol. 20, pp. 1–43.)

Mr. Archbold testified to the rebate on refined oil. Mr. Cassatt, in addition to admitting the rebate paid the Standard companies on refined oil, states the rebate on crude oil and gives the several items making up this rebate, as follows (vol. 20, p. 15):

> Q. How was that reduction made from $1.40 to 88½ cents?—A. It was made by an allowance of 22½ cents to the American Transfer Company, by an allowance of 10 per cent to the Standard Oil Company according to that letter, and by an additional allowance of 15 cents, making 51½ cents reduction, which leaves a net rate of 88½ cents.
>
> Q. Was that allowance on crude made to any other shipper than the Standard Oil Company?—A. Not an allowance of that amount exactly; we did make an allowance to one other shipper, as I before stated.
>
> Q. That is to Mr. Lloyd, of Philadelphia?—A. Yes, sir; he being the only other shipper of crude over our road that was not running oil over this opposition route at reduced rates.

It appears that Mr. Lloyd, either then or shortly afterwards, was connected with the Standard Oil companies and received a salary from the Standard Oil Company, the amount of which in 1888 Mr. Archbold declined to state. (Archbold, vol. 6, p. 3282.)

Mr. Cassatt summed up his testimony with the following remarkable statement (Vol. 20, p. 37):

> Q. Mr. Cassatt, you have stated that one reason why in the consultation at Saratoga in July, 1878, you were driven to putting down the rates was that a new route had been arranged by outside refiners by way of Buffalo and the canal. What was it that drove those outside refiners to the constructing and arranging of that route;

was it not the fact that they could not get the same rates over the trunk lines that were offered by them to the Standard Oil Company?—A. I believe that it was; we stated frankly—I did to the outside refiners, and also to Mr. Scott, the president of our company—that unless they would guarantee us the same quantity of oil, guarantee to ship over our line the same quantity of oil that the Standard Oil Company had guaranteed to ship, we could not make them the same rates; we would make lower net rates to the Standard than they got. I stated to them at the same time, however, that I didn't think the concession we would make the Standard would be one that would drive them out of the business; we did not intend them to do so, and in the distribution of cars and facilities for transportation they would be placed on a strict equality with the Standard Company. They expressed themselves as dissatisfied with that; they said they would never agree to any arrangement by which they did not get the same rates as the Standard, and from that time forward they commenced to arrange in some way to get some other route to the seaboard.

Q. At the same time did they not, Mr. Cassatt, make the request or demand that they should be permitted to put cars of their own on your road?—A. They did at a subsequent interview with Mr. Scott and myself at the office of the company in Philadelphia. We declined to allow them to put cars of their own on the road, for the reason that we had cars enough to do the business that we had just bought from the Empire Line; we declined to allow them to put cars on excepting at the legal rates.

Q. By the legal rates you mean chartered rates?—A. I mean we were compelled to carry the cars of certain individuals at certain rates prescribed by law, and we would carry their cars at those rates.

* * * * *

Q. Mr. Cassatt, you have spoken of the policy that has controlled the action of the Pennsylvania Railroad Company with respect to complying with the demands of the Transfer Company and the Standard Oil Company, and the effect of a contest with those companies on the part of the carrying company, and you have likewise, in reply to Mr. MacVeagh, stated some views with respect to the effect upon the oil traffic; if hostilities should be renewed between your company and these companies touching that matter, I ask you whether if the Pennsylvania producers were to construct refineries on the lines of the Pennsylvania Railroad Company and bind themselves to ship all their product upon the lines of your road would you give them as low rates as you give the

Standard?—A. If they would guarantee us the same quantity—undoubtedly.

Q. Not otherwise?—A. Not otherwise under that contract that we have now with the Standard Oil Company, unless we change our policy and give notice of the abrogation of that contract.

Daniel O'Day, who both Mr. Rockefeller and Mr. Archbold testified in this case was connected with the Standard Companies, and who was the general manager of the American Transfer Company, a Standard pipe line, testified in 1897 that not only did the Pennsylvania Railroad Company in 1878 pay the American Transfer Company a rebate of 20 cents per barrel (which Mr. Cassatt says was afterwards increased to 22½ cents) on the oil it shipped, but on all oil shipped by anyone over the Pennsylvania Railroad. (Vol. 6, pp. 3290–3292.)

Mr. Bostwick, also one of the Standard men, who signed the trust agreements of 1879 and 1882, undertook, in testimony given in 1879, to justify the rates received by the Standard Company because it controlled from 90 to 95 per cent of the business; but his statement is a practical admission that because the Standard controlled that amount of business it could get rates that no one else could procure. (Vol. 6, pp. 3317–3318.)

Having thus summarized the evidence regarding the general practice of discrimination in favor of Standard interests, and given a few illustrations, we now proceed to present the evidence regarding such discriminations in more detail, in chronological order, so far as they have been brought out in the testimony. We believe, however, that the general evidence above summarized goes to show that there were many discriminations and rebates, particularly between 1870 and 1877, which have not been specifically testified to.

THE STANDARD COMPANIES CONTROLLED THE RAILWAY TERMINALS FOR HANDLING THE OIL OF ALL SHIPPERS AT NEW YORK HARBOR.

It is alleged in the petition (vol. A, pp. 14–15) that the Standard Oil Company between 1874 and 1877 acquired the terminal facilities for unloading, storing, and handling oil of the Erie, the New York Central & Hudson River, the

Baltimore & Ohio, and the Pennsylvania railroads at the Atlantic seaboard. Exhibits 3 and 4 to the petition (vol. A, pp. 124–129) show the contracts between the Standard Oil Company and the Erie Railroad made in 1874 and 1875; Exhibit 5 (p. 129) shows the contract with the New York Central & Hudson River Railroad made in 1876. The execution of these contracts is admitted (ans., vol. A, p. 476). No copy of the contract with the Pennsylvania Railroad was procured, but it is admitted by Mr. Rockefeller that at a later date at least the Standard Oil Company, through the National Storage Company, had control of the terminal facilities of the Pennsylvania Railroad. (Rockefeller, vol. 16, p. 3134.) It appears there that at least as early as 1881 the National Storage Company was acquired by the Standard combination, and that it controlled the oil terminals at Communipaw, N. J. Communipaw was the oil terminal of the Pennsylvania Railroad for New York Harbor. Lombard says the Standard got control of this terminal when (in 1877) it bought out the oil interests of the Empire Transportation Line, a Pennsylvania Railroad concern, and the close relations then established between the Standard and the Pennsylvania, hereafter described, render this very probable. (Vol. 1, pp. 248–249.)

The answer (ans., vol. A, pp. 476–477) denies that the allegations of the bill in reference to these contracts regarding terminals are true, and asserts that the contracts were lawful when entered into and were justified by the circumstances existing at the time, and alleges that they were in force only for a short period of time. We believe the evidence does not sustain these averments of the answer.

Mr. Rockefeller undertook in his direct-examination and cross-examination to explain these contracts, and stated that the Standard interests were handling very large quantities of oil, and that they were the natural parties to have control of the warehousing, receiving, and shipping of oil. (Vol. 16, p. 3099.) On cross-examination Mr. Rockefeller said that he could not say when the Standard interests got possession of the terminals nor how long they retained them. (Vol. 16, p. 3137.)

That this control of the terminals lasted a number of years appears from the evidence of Mr. Bostwick, testifying in

1879, who said that the Standard at that time controlled the terminals of the Erie and the New York Central railroads (vol. 6, pp. 3313–3314), and that the New York Central had no other oil terminals at New York Harbor except those controlled by the Standard. He testified that the Erie had no other in 1870 and 1871, but did not testify as to a later date. It is evident, however, from the other testimony that there were no other oil terminals and, as we will show, all shippers had to pay the Standard Oil Company a terminal charge.

This Erie contract (vol. A, p. 124) is dated the 17th of April, 1874, and is made between the Erie Railway Company and its proprietary line, the Atlantic & Great Western Railway Company, parties of the first part, and the Standard Oil Company of Cleveland, party of the second part. It provides for the turning over to the Standard Oil Company of the Erie's oil yards at Weehawken, N. J., on New York Harbor, together with all buildings, erections, docks, and appurtenances. Section 3 of the contract is as follows:

> Rates of freight on all of said products to be made from time to time between J. H. Devereaux, president of the Atlantic & Great Western Railroad Company, and the Standard Oil Company, the same to be to the satisfaction of the said J. H. Devereaux, president; to be, however, no higher than is paid by the competitors of the said Standard Oil Company, from competing western refineries to New York, by all-rail lines, each of said railway companies accepting its pro rata proportion of the through rate thus made.

This provision of the contract takes the power of fixing rates away from the railroad and vests it jointly in the railroad and the Standard Oil Company. If the tariff rates were to have been followed there would have been no occasion for this provision of the contract.

The Standard Oil Company agrees to give 50 per cent of its business to the Erie Railroad. In section 7 the Standard agrees to pay 5 cents a barrel to the Erie Railroad for the use of its yards, and further agrees "to make the charges uniform to all parties who use the yards or for whom services are performed therein, and always as low as any other oil yard affording proper facilities for the transfer, storage,

preparation, and shipment of the oil at the terminus of any railway, or other line competing with the Erie Railway, at or adjacent to the port of New York."

Were it not for the fact that the Standard controlled all the other yards this provision might have been effectual to prevent oppressive charges to the independent shippers.

Section 8 provides that the Standard Oil Company shall assume the collection of freights and charges on all oil received at the yard and render accounts weekly. This provision gave the Standard Company the power to collect the Erie's freight charges for transportation of competitors' oil, thereby giving the Standard the great advantage of knowledge of all competitive shipments and of the rates of freight, and enabling it to compel those parties to pay the full rate while the Standard could obtain any rate it might arrange for with the railroad companies, and it will be shown that the Standard had rebates from all of them. This contract was to run for a period of three years.

Exhibit 4 to the petition is a new contract made March 1, 1875, between the same parties, and so far as concerns the questions involved here it is substantially the same. It is significant that this contract refers to another contract of the same date between the railroad and the Standard "providing for the transportation of crude petroleum and its products to the port of New York." This was very probably a rebate contract.

Exhibit 5 is a contract between the New York Central and Hudson River Railroad Company, the Lake Shore and Michigan Southern Railway Company, and the Standard Oil Company. It was executed on January 1, 1876, but refers to a previous contract of July 22, 1875. By this agreement it was recited that the New York Central desired to provide more enlarged facilities for the receipt, warehousing, cooperage, and delivery to consignees of crude petroleum and the products thereof to be transported by that line. The Standard Oil Company agreed to provide at Hunters Point, Long Island, and at the foot of Sixty-fifth street, in New York City, on the Hudson River, or if possible at some point above said Sixty-fifth street at the port of New York, large and commodious warehouses, wharves, and piers amply provided with

tankage and all the necessary appliances for the receipt, from the boats, barges, and cars of the railroad company, of crude petroleum and the products thereof, etc., and agreed to perform the same terminal services that the railroad would perform.

It was further provided: "The party of the first part (the Standard) also agrees to make its charges uniform to all parties who use said warehouses, wharves, and piers, or for whom service is therein performed, and as low, therefor, as any other party may charge who are or may be doing a similar business and affording equal facilities at or near the terminus (for the port of New York) of any other carriers competing with the party of the second part."

This is the same clause as in the Erie contract, but with the Standard in control of all the terminals the meaning is obvious, that the Standard may levy such charges as it sees fit for handling the petroleum in addition to being paid therefor by the New York Central Company; for it appears in the last part of the contract that the New York Central was to pay weekly to the Standard Oil Company, nominally for its services in furnishing and operating the terminals, 10 per cent of the freight rate fixed from time to time. The Standard Oil Company thus not only received pay from the New York Central in the nature of a rebate on all oil, but was authorized to collect charges from the shippers, and that it did do this is clear by the evidence in this case.

It further appears by this contract that the New York Central agreed to deliver all oil which it transported to New York Harbor through these yards and warehouses which the Standard controlled.

Mr. Bostwick testified before the Hepburn committee October 16, 1879 (vol. 6, pp. 3310–3311, 3316–3317), in relation to these Erie and New York Central terminals. He says that prior to the Standard's contract he had a contract with the Erie for operating the Weehawken docks, and the terminal charge at that time was 30 cents a barrel, and that this was added to the cost of transportation to the independent shipper. (Vol. 6, p. 3311.) At the time he was testifying he had charge of the New York Central yards and declined to answer as to his relation with the Standard Oil

Company in that connection or as to his previous knowledge of the contract of 1875 between the New York Central and the Standard with reference to those yards. (Vol. 6, pp. 3316–3317.)

Mr. Rockefeller admitted that the Standard levied terminal charges on the oil of independents, but he did not know the amount thereof. (Vol. 16, pp. 3133, 3134, 3136.)

Mr. Emery, an independent refiner, testified (vol. 6, p. 2640) as to the effect of this control of terminals by the Standard:

> Q. Yes; did you make efforts to ship into eastern markets?—A. Oh, yes; before this.
>
> Q. And for export?—A. We had been driven out of the export trade even before we quit refining.
>
> Q. What drove you out of that?—A. Well, the buyers couldn't buy our oil at such prices that they could ship it, and the terminal charges were extortionate; in other words, at least, the terminal charges were large, and many of the exporters had also been crushed out of the business, and we confined ourselves to the distributing of our oils by carloads into the cities of the Northeast—New England States and New York State.
>
> Q. Were you able to ship your oil through to the seaboard and sell it or dispose of it at a rate there which would enable you to do business and to live?—A. Not at a profit; no, sir.
>
> Q. Was the Standard Oil Company able at that time to do it?—A. It seemed to be.

Mr. Lombard said that the Standard in this way got knowledge of the business of independent concerns and fixed the terminal charges. (Vol. 1, p. 249.)

RAILWAY POOL AGREEMENT OF 1874.

Exhibit 6 to the petition (vol. A, p. 131) is an agreement between all of the railways, constituting three systems, transporting oil to the seaboard, by which the oil business was divided among them in certain proportions. It provided the rates to be charged for the transportation from Cleveland, Pittsburg, and points in the oil regions to New York, Philadelphia, Baltimore, and Boston. The rates are very high and are substantially the same as the open rates

named in the South Improvement agreement of 1872. Section 10 of the agreement provides:

> The roads transporting the refined oil shall refund to the refiners, as a drawback, the charges paid by them upon the crude oil reaching their refineries by rail; and the road transporting through crude oil to the eastern seaboard shall refund to the shippers 22 cents per barrel; both of said drawbacks to be paid only on oil reaching the initial points of rail shipment through pipes, the owners of which maintain agreed rates of pipeage.

The significance of this provision will become apparent by a consideration of the location of the Standard's refineries as compared with the independent refineries, and of the facts with regard to those pipe lines which "maintain agreed rates of pipeage," the drawbacks provided in the contract accruing only on oil or the products of oil which had originally been transported through such pipes.

The Standard owned all of the refineries at Cleveland except perhaps two or three. Cleveland had a natural advantage on shipments to the west as to both rail and lake transportation (Rockefeller, vol. 16, p. 3058); and by this clause, notwithstanding it was 150 miles west of the oil regions, it was put on an absolute parity in respect to shipments east with the refineries in the oil regions which had no rail transportation to procure their supply of crude.

By this time, moreover, the Standard combination controlled the principal refineries at Pittsburg. Pittsburg also had to ship its crude oil by rail from the oil regions, which were then a considerable distance north of there. By this agreement Pittsburg also was put on a parity with these other refineries in the oil regions on shipments east.

The Standard also controlled the principal refineries, if not all, at Philadelphia and New York Harbor, through the acquisition of Charles Pratt & Co., the Devoe Manufacturing Company, the Long Island Refining Company, the Warden & Frew interests, and others.

It therefore appeared that Cleveland and Pittsburg had a drawback of all of the cost of transportation of crude to the refineries, including both the pipe-line charges and the rail charges, while the refiners at the seaboard obtained a refund

of 22 cents per barrel on their crude. Even had these refunds been available to all refiners at these points, there would have been a discrimination in favor of the Standard interests because of the location of their refineries. But they were not available to all refineries. A further clause limited these rebates as follows:

> Both of said drawbacks to be paid only on oil reaching the initial points of rail shipment through pipes the owners of which maintain agreed rates of pipage. * * * Oil reaching refineries by pipes direct shall not be entitled to the drawbacks on refined oil.

The agreed rates of pipage which were to be maintained, herein referred to, appear in a pipe-line pool agreement. (Petitioner's Exhibit 770.) While Mr. Emery was testifying on cross-examination (vol. 6, p. 2726), counsel was seeking to obtain an admission from him to the effect that any pipe-line company which maintained the agreed rates of pipage could get the benefit of the drawback provided in Exhibit 6 to the petition. Mr. Emery contended that it was impossible for his company or any independent company to come within the terms of the contract and obtain its benefits, and among other reasons he said that there was another contract, bearing date September, 1874, giving the names of the pipe lines and the owners thereof which were entitled to the benefit of the drawback allowed on crude by the railroads under Exhibit 6. Defendant's counsel asked for the contract, but after using it on cross-examination did not offer it. On redirect examination the Government offered it in evidence. (Petitioner's Exhibit 770.) It is therefore competent evidence, although it is not the original. This pool contract fixes rates of pipage and divides the business among the parties thereto.

It is evident also from the dates that this pool contract between the pipe lines is practically referred to in the pool contract between the railroads providing for this drawback and referring to pipe lines "which maintain agreed rates of pipage." The pool contract of the pipe lines went into effect October 1, 1874, and while the pool contract of the railroads itself is not dated, it provides (in its tenth paragraph) for the rates to be established commencing October 1, 1874.

It clearly appears that shortly afterwards the Standard combination controlled all of these pipe lines which signed

the pool agreement of 1874; certain it is that in 1877 every one of them went into the United Pipe Lines, controlled by the Standard combination.

Mr. Rockefeller (vol. 16, p. 3223) admitted that the Standard combination had at the time of the pool contract an interest in the United Pipe Lines, which was the largest of all, as appears from the percentage it obtained in the pool (29½ per cent), and also in the American Transfer Company, which had 7 per cent in the pool, and also in the Sandy and Milton pipe lines. Mr. Campbell and Mr. Hopkins, who were connected with the United Pipe Lines, testified in 1879 that as early as 1877 all of these pipe lines were under the control of the United Pipe Lines. (Vol. 6, pp. 3321–3323, 3327.)

It is evident, as Mr. Emery testifies, that only refiners whose oil was shipped through these lines in the pipe-line pool obtained the rebates under this pool agreement of the railroads, and that the other refiners, who were the principal independent refiners in Pennsylvania, received no such rebates. Mr. Emery testified (vol. 6, p. 2635–2639) that they learned of this agreement about the 1st of October, 1874, through the publication of the Rutter circular. He said:

> A. It was the final Waterloo, sir, of the entire independent interests.
>
> Q. What do you mean by that?—A. Absolute destruction to all the interests. It shut down every refinery on the creek—every one of them; and we discharged from our barrel factory—we were making our own barrels—it set at liberty in Titusville alone over 400 men—between 400 and 500 men; threw them all out of employment.
>
> Q. In what way did it accomplish that result?—A. Through discrimination. We couldn't ship to the export trade, and we couldn't ship into the country. We met the stifling opposition of this same combination.

THE STANDARD OIL COMPANY'S PURCHASE OF THE EMPIRE TRANSPORTATION COMPANY, AND CONTRACT WITH THE PENNSYLVANIA RAILROAD AND OTHER RAILROADS FOR REBATES, IN 1877.

Prior to October 17, 1877, the Pennsylvania Railroad Company controlled the Empire Transportation Company. This latter company had a line of tank cars operating over the Pennsylvania Railroad, a pipe line known as the Union Pipe

Line in western Pennsylvania, a refinery at Philadelphia, and also the Sone & Fleming refinery in New York. During some months previous to this time there was a bitter rate war going on on the part of the northern lines (the New York Central and the Erie), in conjunction with the Standard Oil Company, against the Pennsylvania. The reason for the fight was that the Pennsylvania, through the Empire Transportation Company, was engaged in the refining business. This the Standard Oil Company objected to. (Rockefeller, vol. 16, p. 3087, 3088; Cassatt, vol. 20, p. 23; Archbold, vol. 6, p. 3252.) The rates got down very low. (Cassatt, vol. 20, p. 25.) In October, 1877, a settlement of this fight was made, the Standard interests acquiring the refining properties and pipe lines controlled by the Pennsylvania and Empire Transportation interests. The Pennsylvania Railroad Company took over the cars which had formerly belonged to the Empire Transportation Company and issued car trust certificates therefor, the Standard Oil Company furnishing the money and taking these certificates. (Rockefeller, vol. 16, pp. 3087–3091.) As a part of this settlement the Pennsylvania Railroad Company entered into a contract with the Standard Oil Company for a division of the business of transporting oil between the several railroads, whereby the Standard Oil Company was to have a rebate of 10 per cent on its oil shipped over all the railroads. (Exhibit 7 to petition, vol. A, p. 136.) The answer admits the execution of this contract, and Mr. Rockefeller testifies to the reason for making it. (Vol. 16, pp. 3090, 3115–1318.) The traffic was divided as follows: 47 per cent to the Pennsylvania, 21 per cent each to the Erie and New York Central, and 11 per cent to the Baltimore & Ohio. The Standard agreed to ship at least 2,000,000 barrels of oil per year over the Pennsylvania Railroad, and it was agreed that the Standard was to have a "commission" of 10 per cent on all shipments, as follows:

> And that you (the Pennsylvania Railroad) shall allow to and pay us weekly such commission on our own shipments and the shipments which we may control as may be agreed to by your company and the other trunk lines from time to time; this commission, it is understood, has for the present been fixed at 10 per cent upon the rate, and shall not be fixed at a less percentage except by a mutual agreement of your company and ours; provided

that no other shipper of oil by your line shall pay less than the rate fixed for us before such commission is deducted, and no commission shall be allowed any other shipper unless he shall guarantee and furnish you such quantity of oil for shipment as will, after deduction of commission allowed him, realize to you the same amount of profit you realized from our trade.

Mr. Rockefeller testified that there were no other shippers as large as the Standard, and it was therefore impossible for them to secure any such commission. He undertook to explain this rebate by saying that it was a commission for the service of the Standard in assuming this division of the traffic, but he could not show any particular case where traffic was shipped to any port where it would not naturally have been shipped by the Standard Oil Company, and he could name no service performed which cost the Standard anything. It was therefore simply a rebate, and Mr. Cassatt in his testimony calls it a rebate and includes it to make up the aggregate of the rebates paid the Standard Oil Company during 1878 and 1879. (Cassatt, vol. 20, p. 15; see also Justice, vol. 3, p. 1488.)

This 10 per cent rebate was paid at least up to 1879. Taking the shipments of the 2,000,000 barrels per year over the Pennsylvania Railroad alone, this rebate would amount to something like $350,000, and if the other railroads, all of which paid the same rebate, carried their proportions as provided in the agreement the rebates from this 10 per cent alone would amount to over $700,000 per year; but it appears from the testimony of Mr. Archbold, Mr. Cassatt, and others that this was only a small part of the rebates paid to the Standard Oil Company about this same time.

REBATES TO THE AMERICAN TRANSFER COMPANY, CONTROLLED BY STANDARD OIL INTERESTS.

In addition to the 10 per cent rebate shown in the previous paragraph, other much larger rebates were paid to various Standard companies during 1878 and 1879, among others the American Transfer Company (a pipe-line company), which it is admitted was at that time controlled by the Standard combination.

On February 15, 1878, four months after the contract for the 10 per cent rebate, Daniel O'Day, general manager of

the American Transfer Company, by correspondence (Exhibit 8 to Petition, vol. 22, p. —), entered into a contract with the Pennsylvania Railroad Company for a rebate of 20 cents a barrel on all the crude oil shipped over the Pennsylvania Railroad, not only by the American Transfer Company, but by all other shippers. Mr. Cassatt says this was afterwards made 22½ cents. (Vol. 20, p. 17.) Mr. O'Day's letter states as follows:

> I here repeat what I once stated to you, and which I asked you to receive and treat as strictly confidential, that we have been for many months receiving from the New York Central and Erie railroads certain sums of money, in no instance less than 20 cents per barrel, on every barrel of crude oil carried by each of those roads.

On Mr. Cassatt's acceptance of this proposition he wrote to the comptroller of the Pennsylvania (vol. A, p. 140), stating that he had seen receipted bills showing that the New York Central Railroad allowed the American Transfer Company a commission of 35 cents per barrel, and the Erie Railroad a commission of 20 cents per barrel on Bradford oil and 30 cents on all other oil, and that they had been doing so continuously since the 17th of October last (viz, 1877). The Pennsylvania accordingly agreed to pay 20 cents a barrel, dating back to February 1, 1878.

Mr. Cassatt also testified, in 1879, that he was shown, in February, 1878, a statement of the monthly settlements made by the New York Central and Erie roads, in which it appeared that they paid an allowance or commission larger than the one the Pennsylvania paid to the American Transfer Company. (Vol. 20, pp. 7, 17.)

Mr. Daniel O'Day testified in the case of Ladenburg *v.* The Pennsylvania Railroad Company, in 1897 (vol. 6, p. 3290, et seq.), that the Pennsylvania Railroad Company had paid the 20 cents per barrel on all of the crude oil it transported, whether furnished by the Transfer Company or other shippers. He said:

> Q. These payments of 20 cents per barrel were on all of the oil, during the period mentioned, carried by the Pennsylvania Railroad Company, whether it was furnished by the Transfer Company or by other shippers?—A. I hope so.

Q. That was the intention, was it not, of that agreement?—A. Yes.

* * * * *

Q. Wasn't it your belief at the time that you were substantially getting a compliance with the agreement of May 16, 1878?—A. I believed that I was—I hoped that I was—but I did not know myself positively whether I was or not.

Mr. Cassatt testified to the same effect in 1879, but said that the rebate was then 22½ cents. We quote his testimony, as follows:

> We have an arrangement with the American Transfer Company by which we pay them 22½ cents on all crude oil received and transported by us.
>
> * * * * *
>
> Q. I understand you, Mr. Cassatt, that this 22½ cents paid to the American Transfer Company is not restricted to oil that passed through their lines?—A. No, sir; it is paid on all oil received and transported by us, as I have before stated. (Vol. 20, pp. 6, 8.)

Mr. Archbold undertook (vol. 17, p. 3451) to justify this contract in his testimony in this case by saying that the Transfer Company, at large expense, had provided gathering lines throughout the oil sections to bring oil to the Pennsylvania Railroad, and that this was a reasonable compensation for thus acting as a feeder. He was asked whether the pipe line did not collect from the producer or shipper of the crude 20 cents for its service besides this compensation, and said he imagined that this 20 cents was purely nominal and was given to the producer by reason of competition among the pipe lines. He admitted that he did not know this to be a fact, and it clearly appears from the testimony of Mr. Campbell and Mr. Hopkins, managers of the United Pipe Lines, that during the period in question this rate of 20 cents was not cut, but was actually collected. (Vol. 6, pp. 3325, 3328.) It appears in this case that 20 cents has practically been the universal gathering charge for pipe-line service since about that time. Mr. O'Day made no such claim in justification of the rebate, but simply said that he was trying to get all the rebates he could. (Vol. 6, p. 3292.) Neither does Mr. Cassatt make any attempt to justify the rebate other than that it was necessary to secure to the Pennsylvania its share of the

business, since the other railroads were paying the same or larger rebates. (Vol. 20, p. 7.)

There is one other feature of this contract with the American Transfer Company that we deem worth mentioning, as it shows the straits to which the independent shippers were reduced at this time. In Mr. O'Day's letter (Exhibit 8 to Petition, vol. A, p. 139) he says:

> You are doubtless aware that during the last two years a large amount of oil has been shipped to Richmond via the Chesapeake & Ohio road, and that since the purchase of the Pittsburg lines by us not one barrel has been permitted to go in that direction.
>
> During the season of 1877, and so long as the Columbia Conduit Company afforded the Baltimore & Ohio road access to the oil regions, that company, I understood, refused to accept from the other trunk lines (for its proportion of the oil traffic) less than 20 per cent, but after the purchase by us of the Columbia Conduit you succeeded in arranging with the Baltimore & Ohio for about half as much as they previously claimed.

It will be seen by Exhibit 7 to the petition (vol. A, p. 136) that the percentage allowed to the Baltimore & Ohio after the transaction referred to was, in fact, 11 per cent. These are the arguments used by Mr. O'Day to induce the Pennsylvania to pay the rebate. In other words, the independent shippers in Pittsburg had been compelled to send their oil down the Ohio River southwest to Huntington, W. Va., a distance of about 300 miles; then via the Chesapeake & Ohio to Richmond, Va., and from Richmond by water to New York Harbor. (Irwin, vol. 6, p. 3017.) These refiners had been getting their crude oil through the Columbia Conduit Company, which extended from the oil fields to Pittsburg, and being unable to get reasonable rates over the Pennsylvania Railroad, as testified by Mr. Irwin, they had to take this indirect route. Later they also made some shipments over the Baltimore & Ohio. It appears by the testimony of Mr. Rockefeller that the Standard interests bought the Columbia Conduit Company in October, 1877, just about the time of the contract with the Pennsylvania Railroad for the 10 per cent rebate. Being thus shut off from their supply of crude oil, and being, as Mr. O'Day himself claimed, now dependent upon the Standard Oil Company's pipe lines, several of the independent refiners at Pittsburg were forced to sell out or

lease their works to the Standard during 1877 and 1878. (Irwin, vol. 6, pp. 3015–3022.)

ADDITIONAL REBATES IN 1878.

Being thus shut off from the outlet by way of Pittsburg by the absorption of the Columbia Conduit Company, and being at a great disadvantage by reason of the 10 per cent rebate on the Standard shipments and the 22½-cent rebate on shipments of crude oil via the American Transfer Company, the independent shippers of Pennsylvania undertook, early in 1878, to obtain another outlet for their shipments to the seaboard. They built a pipe line, known as the Equitable Pipe Line, from the Bradford field, in northern Pennsylvania, to a railroad (the Buffalo and McKean Railroad), which transported oil to Buffalo, whence it was to be shipped east by canal boats. (Emery, vol. 6, p. 2649; Lombard, vol. 1, p. 258.)

Mr. Cassatt testified that in order to head off this movement, additional rebates were allowed to the Standard Oil Company by all the trunk lines, besides those which we have described. He said these rebates were arranged at a meeting of the trunk lines at Saratoga in May, 1878, and said further (vol. 20, pp. 30, 31):

> The cause of the reduction made at Saratoga was that the route for oil by rail to Buffalo and thence by canal had been opened up.
>
> * * * * *
>
> I believe that nearly all the so-called outside refiners in New York were in the movement, and the Equitable Pipe Line was also.
>
> * * * * *
>
> Q. You can state whether in your judgment it was the movement of the outside refiners.—A. Yes, sir; in New York.

He said that the additional rebates which the Pennsylvania then made simply followed the line of those made by the New York Central and the Erie.

It was agreed at this meeting that the net rate on Standard shipments of refined oil from the refineries in western Pennsylvania and Ohio to the seaboard should be 80 cents per barrel, the open rate being $1.44½, the rebate being thus 64½

cents. (Cassatt, vol. 20, pp. 18, 19.) We have already referred to Mr. Cassatt's testimony regarding this rebate and to the fact that Mr. Archbold testified to the same rebate being paid to the Acme Oil Company. This rebate of 64½ cents included the rebate of 10 per cent of the rate provided for in the contract of October, 1877.

Besides these additional rebates on refined oil shipments, an additional rebate over and above the 10 per cent rebate and over and above the 22½-cent rebate to the American Transfer Company was allowed on crude oil. This additional rebate was 15 cents, making a total rebate on crude oil shipments to the seaboard at that time of 51½ cents, the published rate being $1.40. The net rate to the Standard was thus 88½ cents. (Cassatt, vol. 20, p. 15.)

These enormous rebates, together with other difficulties which the independent interests met in attempting to use the canal route, made this movement unsuccessful. (Lombard, vol. 1, p. 258.)

SUITS AGAINST THE UNITED PIPE LINES, THE PENNSYLVANIA RAILROAD, AND OTHERS, AND INDICTMENTS OF STANDARD OFFICIALS, FOR CONSPIRACY, IN PENNSYLVANIA.

It is alleged in the petition (vol. A, pp. 19–20) that during the year 1879 it became known among the independent producers and refiners that the Pennsylvania Railroad and other railroads were paying rebates to the Standard Oil Company and its allied interests; that thereupon the State brought suits against the Pennsylvania Railroad Company and other railroads and the United Pipe Lines (controlled by the Standard Oil Company) to oust the said corporations from the exercise of their franchises in Pennsylvania, and that indictments were obtained against John D. Rockefeller, William Rockefeller, Jabez A. Bostwick, Daniel O'Day, William G. Warden, Henry M. Flagler, Jacob J. Vandergrift, and George W. Girty for conspiracy to monopolize the commerce in oil and obtain unlawful rebates and to prevent others than themselves from buying and refining oil. It is admitted (answer, vol. A, pp. 479–480) that these suits were pending, and that on the 29th of January, 1880, the contracts regarding these suits, constituting Exhibit 10 to the petition (vol. A, pp. 141–146) were executed.

One of these contracts was signed by the corporations and leading individuals in the Standard combination, as parties of the first part, and by Benjamin B. Campbell, for himself and as president of the general council of the Petroleum Producers' Union, representing the independents. Among other things it provided:

> I. That the said parties of the first part (Standard concerns) shall and will make no opposition to an entire abrogation of the system of rebates, drawbacks, and secret rates of freight in the transportation of petroleum on the railroads.
>
> II. That said parties of the first part further agree that the railroad companies may make known to the other shippers of petroleum on their several roads all the rates of freight, and that said parties of the first part, or any of them, will not receive any rebate or drawback that the railroad companies are not at liberty to give to other shippers of petroleum.

The independents, on the other hand, agreed to request the dismissal of the suits and indictments against the Standard men and Standard concerns.

Pursuant to this contract, the Pennsylvania Railroad Company, on April 27, 1880, signed an agreement with Mr. Campbell substantially to the same effect, but containing a clause which practically nullified the whole contract. The Pennsylvania agreed, in substance, that it would not pay or allow any shipper of petroleum or its products any rebate, drawback, or commission different or greater than that which it should pay to any other shipper "offering to ship a like quantity."

It appears in this case that in those civil suits pending in Pennsylvania a large number of witnesses were examined, to wit: Mr. Archbold, Mr. Cassatt, Mr. Campbell, Mr. Hopkins, Mr. Justice, and others, whose testimony has been introduced in this case. The enormous rebates were there exposed. This contract of 1880 between the Standard and the independents is a concession that these rebates had been secret, and the Standard interests agreed that the rates might be made known to the independent shippers and the rebates abrogated, but they did not agree that they should be made known or abrogated or that they would not thereafter accept rebates, and as a matter of fact they did accept them in after years.

Neither Mr. Rockefeller nor Mr. Archbold nor any other witness in this case has attempted to explain these contracts or deny the rebates which are here admitted. Mr. Rockefeller was asked on cross-examination (vol. 16, pp. 3127-3130) about these suits and settlements. He admitted that the companies and individuals signing the contract were associated with him and interested in the Standard Oil Company, but he claimed he had no recollection as to whether rebates had been paid and could recall nothing about the contract whatever. It is incomprehensible that these suits could have been pending and these parties under indictment and that Mr. Rockefeller could recall nothing about the matter, especially in view of the fact that he had been preparing to and had testified in the case at bar about many of these early transactions. Mr. Archbold claimed to remember very little more. He said (vol. 17, p. 3458):

> Q. You have no recollection whatever of those suits?—A. It would be very vague indeed. My recollection of them is very vague.
>
> Q. But you do have a vague recollection of them?—A. Oh, now that we talk about it, I do. I don't think I ever attached any special importance to them. It was sort of a custom in those days to bring a suit.
>
> Q. What's that?—A. It was sort of a custom out in the Pennsylvania section to bring suits in those days. It was kind of a habit.

GENERAL CHARACTER AND EXTENT OF RECENT RAILROAD DISCRIMINATIONS.

We now propose to discuss as briefly as possible the system of rebates, secret rates, and discriminations in transportation used by the Standard Oil companies more particularly during the last ten years.

The testimony bearing upon this question covers principally a period varying from five to ten years prior to 1905 and 1906. During the year 1905 it appears from the testimony that the Bureau of Corporations started an investigation into this system of railroad discriminations in favor of Standard companies, and this investigation, together with investigations of the Interstate Commerce Commission and the institution of this suit by the Government, caused the railroads to immediately take out many of these secret

rates and to change their open published rates so as to give the competitors of the Standard more equal and just rates.

We have shown, and it is undoubtedly a fact, that during the early existence of the Standard combination and the Standard Oil Trust it obtained its power and monopoly over commerce in petroleum and its products in this country largely through rebates and discriminatory rates of transportation. There is no question that this system of rebates and discriminations, which in the first instance built up the Standard Oil Company, was illegal at common law before the passage of the interstate commerce act. (*Western Union Tele. Co.* v. *Call Pub. Co.*, 181 U. S., 92.) Upon the passage of that act undoubtedly the Standard Oil Company changed its system, and since then it has not resorted, as to interstate commerce, to any great extent to the system of discriminations by means of so-called "rebates," whereby the railroad paid back to the shipper as a secret rebate part of the money which had been previously paid.

But by reason of the Standard's power with the railroads and its large volume of traffic it has been enabled by other means to obtain preferential rates and crush out competitors. The testimony shows a disposition and a practice to evade the law in every possible way. Usually, however, by the aid of a very able and efficient traffic department, the defendants have been enabled to give some color of legality or compliance with the statute to most of their evasions of the law. Many of the rates, however, are clearly inhibited by the interstate commerce act and amendments thereto. Among the forms which these evasions have taken are (1) direct rebates in rates purely intrastate, (2) the use of a combination of secret intrastate rates on which the Standard concerns have shipped oil in interstate commerce, the secret rates not filed with the Interstate Commerce Commission or published, and (3) discriminations in open and published rates.

The testimony in this case will show that in the open published rates, as well as in secret and unfiled rates, there was radical discrimination against the independent shipping points and in favor of the Standard shipping points, and that in many instances these discriminations were large enough to cover a reasonable profit upon the oil.

It is impossible that without connivance with the Standard Oil Company the railroads of this country should have uniformly made a system of rates whereby with scarcely an exception the independent shipping points were discriminated against in favor of the Standard shipping points.

We maintain, therefore, that, certainly as to the secret rates, and even as to the open published rates, the testimony is clear beyond question of a conspiracy with the railroads to enable the Standard Oil Company to monopolize the trade and commerce in this country. Such conspiracy, of course, can not be made out by the direct testimony of witnesses, but the circumstances are so strong as to leave no possible conclusion but that of the intention to aid the Standard Oil Company to control the commerce in petroleum.

The testimony we believe will show that the railroads have from the earliest date been in league with the Standard Oil Company to give it the control of this business. Undoubtedly this has been brought about by the influence of Standard Oil men as directors of railroads and their investments therein and the enormous shipments which the Standard Oil Company could give or withhold. The effect has been disastrous to the independent shipper. We venture to say that never since the beginning of the business of shipping petroleum have the independent shippers obtained a fair show until the institution of these investigations and this proceeding.

To begin with, the petition alleges and the answer admits that the individual defendants who control the Standard Oil Company and their associates are directors of many leading systems of railroads in the United States. (Petition, vol. A, pp. 98–99; ans., vol. A, p. 429.)

Among these railroads are many important systems, the Chicago, Milwaukee & St. Paul having four Standard Oil directors; the Union Pacific, the Southern Pacific, and the Santa Fe having two each; the New York, New Haven & Hartford, the New York Central (including the Lake Shore and the Michigan Central), the Missouri Pacific, the Boston & Maine, the Wisconsin Central, the Rutland Railroad, and others having one each. Of course it is impossible within the compass of any reasonable time to show the exact stock ownership in these and other railroads by the defendants and their

associates. It is not probable that the books of the railroad companies would show it. It is a well-known fact that such ownerships are frequently held in the names of clerks and dummies, but the fact that these defendants and their associates are directors in many of the leading railroads of the country, the fact that the Standard Oil companies at times loan large sums of money on railroad securities in Wall street, as proved in this case, the fact that these individuals and their associates are very potential factors in railroad financing in this country, together with the direct evidence of actual connivance of railroads with the Standard Oil Company in several cases to give it preferential rates, rebates, and discriminations, are important proof to sustain the Government's charge of a wide-reaching conspiracy.

It is a well-known fact that this group of defendants is the most influential in financial circles in the United States. This influence has undoubtedly been used to obtain these preferential rates, because it could not be possible that it merely happened in the ordinary course of business that practically every Standard shipping point would be favored with advantageous rates as against competitors.

We will take up the subject by territories substantially as alleged in the bill, following generally the course of the Government's proof.

It was agreed between counsel that Mr. E. D. Durand, Mr. T. C. M. Schindler, Mr. L. Conant, jr., and Mr. Frank J. Poole, officials and agents of the Bureau of Corporations, and who as such had examined and made copies and abstracts of records, tariffs, waybills, collection vouchers, books, and papers showing the secret rates, discriminations, and other facts connected with this branch of the case, might testify to these documents without producing the originals, and that no objection should be made to the testimony on account of its being secondary evidence. This was done for the purpose of expediting the taking of testimony. (Stipulation, vol. 6, p. 3335.)

The testimony of these witnesses was taken, as well as testimony of a large number of other witnesses bearing upon the railroad rate situation.

The unfiled and unpublished rates on which much of this commerce moved are not denied by the defendants, and the

testimony of the Government in this regard as to the various situations is substantially undisputed. The defendants do make certain claims, principally of a custom of violating the law, which are mostly general in their nature and apply alike to several of these situations. Except where the defendants' testimony applies exclusively to a particular case, this testimony will be taken up and explained after we finish the statement of the Government's position.

SECRET, ILLEGAL, AND DISCRIMINATORY RATES FROM WHITING INTO THE SOUTH.

The Whiting refinery was constructed and commenced operation about 1890. It is the largest refinery of the Standard except those at the seaboard. Aside from other territories it furnishes the principal supply for the territory known as the selling territory of the Standard Oil Company of Kentucky, south of the Ohio River, east of the Mississippi River, and west of a strip along the Atlantic seaboard, and has done so for many years. Mr. Westcott so testified (p. 707, vol. 2), as well as other witnesses.

Defendants' Exhibit 171 is a map showing the vast area south of the Ohio River supplied from Whiting on the basis of the secret rates which will hereafter be described. Defendants' Exhibit 172 shows that during the year 1905, 60 per cent of the petroleum products shipped by the Standard Oil Company into this territory was shipped on the basis of these secret rates, from Whiting. As a large amount of lubricating oil and other grades of oil not made at Whiting were shipped into this territory from other refineries, there is no question that a much larger per cent of the refined oil and gasoline came from Whiting. Prior to 1905 the proportion shipped from Whiting was apparently still larger, as shipments from Texas, which were considerable in 1905, began only a short time before.

Until recently, practically the only competitors of the Standard Oil Company who could or did ship any oil into this southern territory were situated either in western Pennsylvania, or at Cleveland, Toledo, or Findlay, Ohio. All of these points are, broadly speaking, at substantially the same distance (by short-line railway routes) from this southern territory as is Whiting. The evidence shows, however, that

the great bulk of the shipments of the Standard Oil Company from Whiting into this southern territory were for many years shipped on secret and illegal rates much lower than the published rates from Whiting, and still further below the rates from the independent refining points to the same destinations. This extraordinary railroad discrimination was undoubtedly a powerful aid to the Standard Oil Company in maintaining its almost complete monopoly of the business of marketing oil in the Southern States, and thereby extorting excessive prices and profits from the people of this section.

These discriminations were made in two different ways: First, by a secret rate from Whiting to Evansville, and, second, by a secret rate combination from Whiting, via Evansville and Grand Junction, Tenn., to southern destinations. For convenience these will be referred to, respectively, as the Evansville rate and the Grand Junction rate.

The extent of this discrimination against the independent shipping points and in favor of the Standard Oil shipping point at Whiting was shown by a table prepared by Mr. Schindler, a railway expert and an old traffic man, and introduced in evidence by the Government as Exhibit 586, vol. 10. (Schindler, vol. 4, 1672 et seq.) This exhibit shows the oil rates and distances from Pittsburg, Cleveland, and Toledo, independent shipping points, to various destinations in the Southern States. It shows the published tariff rates and the short-line mileage from Whiting, Ind., to the same places. It also shows the actual rates paid by the Standard Oil Company from Whiting during 1904 and the distance actually transported, the latter only in the case of shipments passing by way of Grand Junction, which in nearly all instances was a roundabout route. These towns, Mr. Schindler testified, were picked as representative towns, and substantially the same condition existed as to all places in the southern territory. The exhibit actually covers 61 representative towns, to all but 5 of which the Standard shipped on the secret rates mentioned, while the open rates to these five (known as Mississippi Valley points) were also discriminatory in favor of Whiting.

We desire to cite a few instances of the discriminations shown in this exhibit. The other independent shipping

points in northwestern Pennsylvania take the same rate as Pittsburg. The rate from Pittsburg to Chattanooga, a distance of 651 miles, was 47 cents per hundred. The rate paid by the Standard Oil Company from Whiting, a distance of 849 miles by the Grand Junction route actually used, was 25.9 cents. In other words, the Standard Oil Company paid 21 cents a hundred less for shipping 200 miles farther. This difference amounts to over a cent and a quarter a gallon, which in itself is a large profit on oil. The discrimination against Cleveland and Toledo on shipments to Chattanooga was equally great.

Take, again, Birmingham, Ala. The rate from Pittsburg, a distance of 794 miles, was 51.5 cents; from Whiting, a distance of 820 miles, it was 29.5 cents, a difference of 22 cents; while there was an equal discrimination against Cleveland and Toledo.

Another illustration is Harriman, Tenn. The Pittsburg rate, for a distance of 572 miles, was 46 cents. The Standard Oil Company could have shipped from Whiting by short line at the legally published rates, a distance of 529 miles, for 38.5 cents (39 cents, according to Defendants' Exhibit 146, purporting to correct errors in Petitioner's Exhibit 586). It actually did ship via Grand Junction, a distance of 1,011 miles, and paid 31.3 cents, a discrimination of nearly 15 cents as against Pittsburg, on a haul of nearly twice the distance.

As a matter of fact, this table shows, as alleged in the bill, that the discrimination in favor of Whiting and against these independent points will average 12 or 15 cents a hundred, and was in fact universal as to every town throughout this large territory in the South. This accounts for the fact that in this entire territory the Standard Oil Company has substantially 90 per cent of the business, as heretofore shown.

SECRET RATES FROM WHITING TO EVANSVILLE.

Taking up first more specifically the secret rates from Whiting to Evansville, which were used as a means of making many of these great discriminations to points in the South. For many years the legally published rate from Chicago and Chicago points, including Whiting, to Evansville and also to other Ohio River crossings, has been 11 cents per 100 pounds.

For years, up to November, 1905, the Standard Oil Company paid on shipments from Whiting to Evansville either 8¼ cents or 6 cents per 100 pounds, depending on the final destination. These rates were not filed with the Interstate Commerce Commission, were kept secret by the most careful methods, and were clearly in violation of law, especially in so far as they were used on heavy shipments destined to points in the South beyond Evansville.

The legal rate of 11 cents per 100 pounds was named in large and conspicuous tariffs issued by the Chicago and Ohio River Committee, a railway association. This association issued two series of tariffs, one covering rates from Chicago and neighboring points to Evansville and various other Ohio River points locally, and the other covering rates to the same points on products destined to points farther south, both tariffs, however, bearing the same rate on oil, 11 cents per 100 pounds.

These tariffs were open, notorious, plain class and commodity tariffs, in the hands of thousands of shippers, and filed with the Interstate Commerce Commission. The rate on oil in them was not a class rate, but was a commodity rate specifically named on petroleum and its products alone.

Both of these sets of tariffs read primarily from Chicago, but all of them showed on their face that they applied also from Dolton, Ill., a junction near Chicago, at which the Chicago & Eastern Illinois Railroad received oil originating at Whiting. Beginning in July, 1903, the Chicago & Eastern Illinois, by tariffs known as application sheets, filed with the Interstate Commerce Commission, made these tariffs from Chicago to Evansville apply also from Whiting. (Durand, vol. 4, p. 1522; Petitioner's Exhibit 520, vol. 9.) Moreover, Mr. Felton, traffic manager of the Standard Oil Company, testifies that for many years it was the practice and understanding of the railroads that all rates from Chicago were applicable also from Whiting (pp. 1742–1746, vol. 14).

The legal rate from Whiting to Evansville was therefore 11 cents. The Chicago & Eastern Illinois Railroad and the Evansville & Terre Haute Railroad, which together constitute a route from Chicago to Evansville, were parties to all the tariffs naming this rate. (Durand, pp. 1516–1528, vol. 4.)

During all the time that these 11-cent tariffs were in effect the Standard Oil Company was shipping oil from Whiting to Evansville over this route—consisting of the Chicago Terminal Transfer (the switching road which carried the oil across the state line from Whiting to Dolton, Ill.), the Chicago & Eastern Illinois from Dolton to Terre Haute, Ind., and the Evansville & Terre Haute from Terre Haute to Evansville—at either 8¼ or 6 cents per 100 pounds, secret rates not filed with the Interstate Commerce Commission. The rate of 8¼ cents during this period was named in various tariffs of the Chicago & Eastern Illinois Railroad. (See Petitioner's Exhibits 521, 522, 589, 590, 591, vols. 9 and 10.) These were small, inconspicuous sheets, and they named rates only on oil, so that there was no occasion for them to reach the hands of shippers generally.

Mr. Felton, who since 1898 has been connected with the traffic department of the Standard Oil Company, and for several years in charge of it, was assistant general freight agent or general freight agent of the Chicago & Eastern Illinois from 1892 to 1897. He admits that he issued in 1892 the first tariff naming the 8¼-cent rate, and that he intended it to be secret—that is, according to his statement, secret from other railroads. He admits that he personally joined with the other roads in issuing and filing the legal rate of 11 cents. (Pp. 1909–1910, vol. 14.) He gives as a reason why he established the rate of 8¼ cents and failed to file it, that there were other roads which could take oil from Whiting to Evansville without passing out of the State of Indiana, and which could therefore make rates that they did not have to file. He admits, however, that he does not recall any evidence that such roads were departing from the 11-cent rate. He says he consulted the counsel of the Chicago & Eastern Illinois, who advised him that shipments from points in Indiana to other points in Indiana, over the route of the Chicago & Eastern Illinois, passing part of the distance through Illinois, were intrastate shipments for which rates did not have to be filed. (Felton, pp. 1800–1802; 1909–1923, vol. 14.)

That this traffic was interstate was settled by the case of *Hanley* v. *Kansas City Southern Ry. Co.* (187 U. S., 617), in which it was held that the transportation from one

State into another and back into the State of origin was interstate commerce. This decision was rendered January 5, 1903, and cites with approval the case of *State* v. *Chicago, St. Paul, Minneapolis & Omaha Ry. Co.* (40 Minn., 267), and other decisions made many years earlier. It certainly can not be claimed that after this decision the defendants in good faith believed that transportation from Indiana into Illinois and back into Indiana was intrastate. Moreover, in any case, most of the shipments went beyond Evansville to points in other States on through bills of lading.

As a matter of fact, this unfiled rate of 8¼ cents was, for a number of years at least, used not merely on local shipments from Whiting to Evansville, but also on far more numerous shipments destined on through consignments and without reconsignment to points in other States south of Evansville. (Durand, pp. 1543–1560, vol. 4.)

That these shipments were, in every practical and legal sense, interstate shipments, appears clearly from the course of business in handling them. (Stipulation, vol. 20, p. 461.) It appears that the Standard Oil Company at Whiting prepared shipping orders covering these shipments and delivered these orders to the agent of the Chicago Terminal Transfer Railroad at Whiting, receiving at the same time a receipt or bill of lading signed by the agent of the railroad, which was substantially a precise duplicate of the shipping order. These shipping orders, a copy of one of which will be found on page 461 of volume 20, showed the routing from Whiting to Evansville via the Chicago & Eastern Illinois and Evansville & Terre Haute railroads, and provided for the prepayment of the charges from Whiting to Evansville. Each also contained the name of the consignee and the final destination at some point south of Evansville and named the railroad or railroads over which the shipment was to proceed from Evansville. From this shipping order the agent of the Chicago Terminal Transfer Railroad prepared a waybill containing the same information as to destination, routing, etc. The agent of the Chicago & Eastern Illinois at Dolton, Ill., when he received the shipment from the Chicago Terminal Transfer Railroad, made out a waybill covering the transportation to Evansville, in which waybill appeared the same information, which was taken

from the waybills of the Chicago Terminal Transfer Railroad. On arrival at Evansville, the cars were turned over to the connecting line extending south, and the agent of such line in turn got his instructions as to the final destination and routing from the waybills of the Chicago & Eastern Illinois Railroad. The Standard Oil Company did not give directly any instructions or shipping orders to the Chicago & Eastern Illinois Railroad, or to the railroads extending south from Evansville. The shipping order prepared at Whiting and delivered to the Chicago Terminal Transfer Railroad was the direction for a through shipment to some specific point named therein south of Evansville in some other State, and was the only shipping order or direction covering any part of the distance. (P. 462, vol. 20.) It is obvious that such shipments were strictly interstate in character, quite aside from the fact that they passed from Indiana into Illinois and back again on the way to Evansville.

It is worthy of note, as indicating the point of view of the parties concerning the propriety of using such an unfiled tariff on clearly interstate business, that the tariff of 1892 (Petitioner's Exhibit 589, vol. 10), naming the 8¼-cent rate from Whiting to Evansville, which was issued by Mr. Felton, specifically stated that it was applicable only to "Evansville proper" and must not be used on shipments destined to points beyond. Whether or not this restriction was actually observed in the practice of the railroad does not appear in the evidence.

In 1897, however, growing bolder in their evasion of the law, the tariff was reissued with the omission of the word "proper" after Evansville, and of the note stating that the rate must not be applied on shipments destined beyond Evansville (see Petitioner's Exhibits 591, vol. 10, and 522, vol. 9), and, as already stated, the unfiled rate was thereafter actually used on such shipments.

The court will see, as we proceed with this subject, that the most common device of the Standard Oil Company to evade the Interstate Commerce Law was to use certain intrastate rates, not published or filed, on which to ship interstate business.

Whether or not the Chicago & Eastern Illinois in good faith believed that shipments passing from Indiana into

Illinois and back into Indiana were not interstate, and whether or not it is true as contended by various witnesses for the defense that it was the common practice of railroads to use such state rates on interstate business and was not considered illegal and was not necessarily designed to secure secrecy or to discriminate in favor of particular shippers, is beside the point in this instance. For it clearly appears that this rate of 8¼ cents on oil was actually secret and did result in extraordinary discrimination in favor of the Standard Oil Company.

Before referring to the further evidence of such secrecy, attention is called to the rate of 6 cents from Whiting to Evansville which for several years was applied by the Chicago & Eastern Illinois on Standard shipments destined to certain points in the south. For these shipments it appears that there was not even, as in the case of the 8¼-cent rate, a tariff authority of any sort, even an unfiled one. (Durand, p. 1558, vol. 4; Felton, p. 1922, vol. 14.) The defendants put in evidence letters from Mr. Campbell, the general freight agent of the Chicago & Eastern Illinois, to Mr. McClintock, formerly in charge of the traffic of the Standard Oil Company of Indiana. (Defendant's Exhibits 224, 225, and 226.) The first, dated March 18, 1898, stated that, in accordance with a conversation with Mr. McClintock, the railroad would make a rate of 6 cents from Whiting to Evansville on shipments destined to certain points. The second, dated January 8, 1901, stated that "our tariff," naming the 6-cent rate, was still in effect. These letters can not be considered as justifying the Standard Oil Company in assuming that the 6-cent rate was covered by a published and filed tariff; on the contrary, the knowledge of the Standard, hereafter set forth, that the 8¼-cent rate was secret and not filed, plainly put its traffic officers on inquiry as to whether the still lower 6-cent rate was filed.

Moreover, the character of the 6-cent rate was such that any man familiar with railroad practices would at once recognize its peculiarity and the improbability of its being filed. As above pointed out, the letter of March 18, 1898, to Mr. McClintock stated that the 6-cent rate would apply between Whiting and Evansville on shipments destined to certain particular points in the South. While other points were

later added to this list, the practice continued of applying this rate only where the ultimate destination was certain specified towns, the 8¼-cent rate being applied between Whiting and Evansville on shipments destined to other towns. A partial list of towns taking these two rates respectively is shown in petitioner's Exhibit 531, vol. 9.

Not only were the 8¼ and 6 cent rates between Whiting and Evansville not filed with the Interstate Commerce Commission, but the evidence clearly shows that the Standard Oil Company knew that they were not filed and desired that they should not be filed.

In the first place, as already stated, Mr. Felton admits that, when general freight agent of the Chicago & Eastern Illinois, he intended to keep the 8¼-cent rate secret, and that for that reason the rate was not filed. This knowledge, of course, remained with him when, in 1898, he entered the Standard's traffic department.

In the second place, in the file of the Chicago & Eastern Illinois containing its series of 8¼-cent tariffs was a memorandum reading as follows:

> S. J. C.
>
> As I understand the "sittiwashun," Mr. Page did not desire the 0.0825 rate filed with I. C. C., and for that reason we made tariff read from Whiting in connection with C. T. T. R. R.
>
> B. H. H.
>
> H. A. R. says make state tariff and cancel both the others.

It appears by the testimony that S. J. C., the person addressed in this memorandum, was the S. J. Cooke, the assistant general freight agent, who signed the tariff of the Chicago & Eastern Illinois Railroad. Mr. Page was Howard Page, the traffic manager of the Standard Oil Company. "H. A. R." was H. A. Rubidge, the auditor of the railroad company. (Durand, 1541 and 1542, vol. 4.)

This is a record of the railroad found with the tariffs, and is competent evidence explaining the tariffs. It is not an unsigned declaration against the defendant by a third party; it is a part of the work of one of the conspirators, conspiracy between the railroad and the Standard being established in this case.

The significance of this is evident. If the Chicago & Eastern Illinois Railroad had made a tariff reading from Dolton, Ill., the point where it actually received the oil, or from Chicago to Evansville, Ind., it would clearly have been an interstate tariff, which would have to be filed with the Interstate Commerce Commission, but by making the Chicago Terminal Transfer Railway, which extended from Whiting, Ind., over to Dolton, a party to the tariff, and making the tariff thereby read from Whiting, Ind., to Evansville, Ind., it was hoped and believed that it might be considered intrastate business. Mr. Page did not want the tariff filed, and therefore this device of a so-called "state tariff" was adopted, as the memorandum says.

Another evidence of the intention of the railroad company and of the Standard Oil Company to evade and violate the law is found in the secrecy of the methods which were used to conceal the rates actually paid on these shipments from Whiting to Evansville, which methods the Standard had knowledge of from the papers it received from the railroad at frequent and regular intervals.

It is true that on shipments from Whiting to Evansville proper, not destined beyond, the original waybills of the Chicago & Eastern Illinois Railroad showed the rate of 8¼ cents, the secret state rate which was actually being paid. (Durand, p. 1543, vol. 4.) It is probable (as is indicated also by the form of the early 8¼ cent tariff of 1892 already referred to) that the railroad believed that there was more likelihood of this rate, although not filed with the Interstate Commerce Commission, being held to be a legal rate on such shipments than on shipments to Evansville destined to points beyond, and hence took less pains to conceal the rate. On shipments of the latter class (the practice regarding which is fully admitted in a stipulation, vol. 14, p. 2073; see also Durand, vol. 4, pp. 1547–55; Schindler, pp. 1660–62, vol. 4) the waybills in all cases showed a rate of 11 cents, the legal rate, but the settlements made by the Standard Oil Company by a secret device were at the lower rates, 8¼ and 6 cents.

The settlement with the Standard Oil Company at the lower rates on the shipments which had originally been waybilled at 11 cents was made by means of what are known as

"collection vouchers" rendered to the Standard twice each month. Each of these vouchers had attached to it a list of cars showing the weight, the destination, and (at least ordinarily) the rate of 11 cents and the freight charges computed at 11 cents. These lists were clear notices to the Standard that the shipments were being waybilled at the filed rate of 11 cents. But the collection voucher actually rendered to and paid by the Standard Oil Company contained an amount much less than the sum of the amounts at the 11-cent rate. This voucher, however, did not ordinarily show any rate whatever, or give any indication as to how this lower rate was arrived at.

The investigation of the Bureau of Corporations, however, showed how the computation of the actual charges was made. It so happened that on a copy of one of the bills rendered by the railroad company to the Standard Oil Company, found in the office of the railroad company, a red ink correction had been made, indicating that a certain number of pounds took a rate of 8¼ cents and another number of pounds a rate of 6 cents. (Petitioner's Exhibit 526, vol. 9.) An examination of the list of cars attached to this bill (same exhibit) showed that certain cars were marked with a check sign and others with a plus mark. The sum of the weight of the cars marked with a check sign was found to be the weight indicated on this bill as taking the rate of 8¼ cents, and the sum of the weights of the cars marked with a plus mark was found to equal the weight indicated as taking the 6-cent rate. (Durand, pp. 1547–1548, vol. 4.)

Further examination showed, as testified to by Mr. Durand, that these lists of cars for other periods of time in general had such check signs and plus signs upon them, and by taking the sum of the weights of the two classes of cars separately and multiplying the one by 8¼ and the other by 6 cents, the amount actually charged the Standard Oil Company, as indicated in the bill, would regularly be arrived at. (Durand, pp. 1549–1555, vol. 4.)

Copies of selected bills rendered to the Standard Oil Company, and accompanying lists of shipments showing these check signs and plus marks will be found in Petitioner's Exhibits 525 to 528, vol. 9, inclusive.

This method of making out the waybills and lists of shipments and of collecting the charges against the Standard Oil

Company would obviously serve to keep knowledge of the actual rate from the local agents of the railroad and from most of the employees generally, even in the central office. The local agent at Dolton, for example, who made out the waybill on the shipment to Evansville destined to points beyond, had no way of knowing from his records but what the actual rate collected was 11 cents. He did not collect the charges, but sent the list of cars to the central office of the railroad, where it could be handled in this secret manner. This practice would also serve to conceal the use of these low rates on shipments going beyond Evansvile from representatives of the Government, or of the freight association (Chicago and Ohio River Committee), who might examine the records to see whether the 11-cent rate was being maintained.

It may be noted that the only other instances on this railroad in which the practice of collecting freight charges on oil through the central office was employed were in the case of shipments to Grand Junction, Tenn., and to East St. Louis, which, as we shall show, were also on secret rates. (Durand, p. 1559–1560, vol. 4.)

The volume of shipments affected by these secret rates of 8¼ and 6 cents was very great. Mr. Durand testified that, aside from the shipments from Whiting to Evansville locally, which were not handled by means of collection bills, the collection bills of the Chicago & Eastern Illinois Railroad showed the shipment between January, 1903, and November, 1905, of 99,120,823 pounds on these rates. The amount of freight charges at the 11-cent rate, if it had been collected, would have been about $109,000, whereas the actual freight charges were $78,792.38. (Durand, p. 1558, vol. 4.)

Mr. Schindler testified that he examined the waybills of like shipments to those examined by Mr. Durand from Whiting, Ind., to Evansville, Ind., destined to points beyond for shipments made for the Standard Oil Company between September 1, 1903, and December 1, 1905, amounting to 1,900 cars. (Pp. 1661–1663, vol. 4.)

The Standard Oil Company thus got what was equivalent to a rebate of either 2¾ or 5 cents per 100 pounds from the legal rate on its shipments to Evansville.

As more fully shown later (see p. 233), the legal rate from Whiting to points in the South by way of Evansville was

(and still is) from 3½ to 4 cents per 100 pounds lower than the legal rate from Toledo and Cleveland, competing refining points at substantially the same distance from the destinations. Consequently, these secret rates, giving the Standard a further advantage, resulted in making its total advantage over these competitors from 7 to 9 cents per 100 pounds.

SECRET AND DISCRIMINATORY GRAND JUNCTION RATE COMBINATION.

Much more important than the Evansville secret rate was the secret-rate combination from Whiting to southern points by way of Grand Junction, Tenn. This device for the evasion of the law is somewhat intricate and requires careful consideration.

Grand Junction is an unimportant village in the southwestern part of Tennessee, at a junction between the Illinois Central Railroad and the Southern Railway (prior to March 1, 1898, the Memphis & Charleston). The Illinois Central has a line from Chicago to Grand Junction by way of Cairo. It received oil originating from Whiting at Riverdale, Ill. (near Chicago), the junction with the Chicago Terminal Transfer Railway, leading from Whiting. Grand Junction may also be reached by a combination of the Chicago Terminal Transfer from Whiting to Dolton, Ill. (near Chicago), the Chicago & Eastern Illinois from Dolton to Terre Haute, Ind., the Evansville & Terre Haute from Terre Haute to Evansville, and the Illinois Central from Evansville to Grand Junction.

Prior to 1898 large shipments of oil were made by the Standard Oil Company via the Illinois Central direct from Whiting (via Riverdale) to Grand Junction. Beginning the latter part of 1897 or early in 1898, the route used was by the combination just described. From Grand Junction the oil was moved by the Southern Railway and its connections to many points throughout the Southern States.

It appears from the testimony that the ordinary manner of making rates on traffic of all kinds from Whiting, Toledo, Cleveland, Pittsburg, and similar northern points to points south of the Ohio River, with the exception of certain points on the Mississippi River and the Gulf of Mexico, is by a combination of local rates; that is, a local rate from the

shipping points to some Ohio River crossing, such as Evansville, Louisville, Cincinnati, and Cairo, plus a local rate from such crossing to the destination in the Southern States. This has been for years a well-known system and is almost universal. (Schindler, 1660, vol. 4.) In other words, there are ordinarily no through rates from these northern points to southern destinations, but only combinations of rates based on the Ohio River.

We have already shown that the legally filed and published rate on oil from Chicago and Whiting to Evansville and other Ohio River crossings for years has been 11 cents per 100 pounds, whether the product was destined to these points locally or whether the final destination was to points beyond.

Rates on petroleum from Evansville to southern points, which would under the prevailing practice of railroads on general traffic be used on shipments reaching Evansville from Chicago on the 11-cent rate, were named in a series of tariffs issued by the Southern Railway which were fully described in the evidence of Mr. Durand (pp. 1564 *et seq.*, vol. 4). The latest of these tariffs, covering the period from November, 1904 to 1906, was known as petroleum tariff No. 3. It named rates from Evansville to a large number of destinations scattered throughout the South.

As we have already stated, on shipments of oil passing through Evansville and by way of Grand Junction to southern points the oil was taken from Evansville to Grand Junction over the Illinois Central Railroad, and from Grand Junction south and east over the Southern Railway and its connections. The Southern Railway issued a series of division sheets in connection with the tariffs naming the rates from Evansville, showing the divisions or proportions of the published rates which would accrue to the Illinois Central Railroad from Evansville to Grand Junction, and to the Southern Railway and its connections from Grand Junction to the points of final destination. The division sheet in connection with the petroleum tariff No. 3 was known as division sheet No. 1 to petroleum tariff No. 3, and constitutes Petitioner's Exhibit 532 (vol. 9). (Durand, 1565, vol. 4.) This division sheet should be carefully examined by the court in order to make clear the method employed in this secret rate combination. It will be seen that the division sheet

shows not only the several divisions accruing to the different lines, but also the total rate from Evansville to the final destination, corresponding in all cases with the rate named in the tariff itself.

This division sheet and the previous similar division sheets in connection with the previous tariffs were not filed with the Interstate Commerce Commission, nor in fact is it the custom of railroads ordinarily to file such division sheets. (Culp, p. 1985, vol. 4.) They are simply private arrangements between the railroads for the division among themselves of the published and filed joint through rates, and ordinarily are not known to the shipping public or of interest to the shipping public. These particular division sheets were, however, furnished to the Standard Oil Company, or at least some of them were. (See name of Chas. Van Overbeke, in charge of the traffic of the Standard Oil Company of Kentucky, on the "Ex. list" of Petitioner's Exhibits 651 and 652, A to D, vol. 10.)

The government testimony describes in detail not only the petroleum tariff No. 3, showing the rates between 1904 and 1906, but also the preceding tariffs of the Southern Railway, substantially similar, back to 1901, and all the division sheets to these several tariffs, and also earlier division sheets which showed the total rate and the divisions as far back as 1897. (Petitioner's Exhibits 532, 535–537, 544, 651, 652, vols. 9 and 10.)

The Standard Oil Company did not ship under the combination of rates appearing in these two published tariffs, namely, the 11-cent rate from Whiting to Evansville plus the rates in petroleum tariff No. 3 (and its predecessors) from Evansville to southern points. South of Grand Junction it paid the proportions of the published rates from Evansville accruing to the Southern Railway and its connections from Grand Junction in accordance with the division sheets above described. North of Grand Junction it paid much less than the proportions properly accruing to the Illinois Central out of that published rate for its haul from Evansville to Grand Junction. In other words, the published rate was violated. The amount actually paid for the entire distance from Whiting to final destination was

much less than the amount properly due, under the published tariffs.

This was done in the following manner: From February, 1896, to February, 1898, the Illinois Central made and filed with the Interstate Commerce Commission through tariffs of 13 cents per 100 pounds from Whiting, Ind., to Grand Junction, Tenn., on oil destined to points on the Memphis & Charleston Railroad and its connections, this Memphis & Charleston Railroad, as already stated, being now a part of the Southern Railway. (Petitioner's Exhibit 534; Defendants' Exhibit 169.) On February 25, 1898, this rate was withdrawn. Meanwhile, however, and on September 10, 1897 (Petitioner's Testimony, p. 1569, vol. 4,) a like tariff was issued, and filed with the Interstate Commerce Commission, naming 13 cents over a joint route consisting of the Chicago & Eastern Illinois, Evansville & Terre Haute, and Illinois Central, and passing through Evansville. (Defendants' Exhibit 174.) This was reissued February 8, 1898, and remained in effect until December, 1905. (Petitioner's Exhibit 533.) These tariffs, however, were not made to read directly from Whiting or Chicago, but named as the point of origin Dolton, Ill., which, as we have already stated, is the junction of the Chicago & Eastern Illinois with the Chicago Terminal Transfer Railway coming from Whiting, while the application from Whiting was shown only in a note below.

This rate of 13 cents was the rate actually paid by the Standard Oil Company from Whiting to Grand Junction. Beyond Grand Junction it paid the proportions of the open rate from Evansville to destination accruing to the lines from Grand Junction, as shown in the unfiled and unpublished division sheets above described. The sum of the two payments was in each case much less than the only combination of published rates.

To make clear the method actually pursued and the departure from the legal rates resulting therefrom, a specific illustration may be taken. The Southern Railway Petroleum Tariff No. 3 shows as the legally published and filed rate from Evansville to Birmingham, Ala., 33 cents per 100 pounds. The legal rate from Whiting to Evansville, as we have shown, was 11 cents per 100 pounds, so that the sum

of these rates, 44 cents, was the only legally published combination of rates. The division sheet (Petitioner's Exhibit 532) shows further that of the 33 cents from Evansville to Birmingham the Illinois Central Railway was entitled, by a private agreement between the railroads covered by this unpublished division sheet, to 16½ cents per 100 pounds, or one-half of the through rate, to cover its haul from Evansville to Grand Junction. The Southern Railway was entitled to the same amount from Grand Junction to Birmingham. As a matter of fact, the Standard Oil Company made shipments on the tariff which we have described from Whiting to Grand Junction for 13 cents per 100 pounds, and then paid 16½ cents from Grand Junction to Birmingham, making the total 29½ cents, or 14½ cents less than the published rate combination. (See Petitioner's Exhibit 585.) In other words, the Standard Oil Company paid all the way from Whiting to Grand Junction less than the Illinois Central Railroad was entitled and supposed to get for the haul from Evansville to Grand Junction alone.

The nature of the departure from the legal rates is now evident. The Southern Railway was justified in collecting 16½ cents per 100 pounds from Grand Junction to Birmingham only as its proportion of a rate of 33 cents to be charged from Evansville to Birmingham; that is, only in case 16½ cents was paid to the Illinois Central Railroad from Evansville to Grand Junction. An application of 16½ cents from Grand Junction to Birmingham on cars which had come from Whiting at a 13-cent rate was without any authority in any published and filed tariff. The ordinary shipper of oil or the Interstate Commerce Commission, not having access to the division sheets, would not have any means of knowing of the combination actually used; the published tariffs showed no such combination.

As more fully shown below, the officers of the Southern Railway themselves declared that it was not proper to apply these proportions south of Grand Junction unless the proportions north of Grand Junction were paid. They testified, however, that they did not know that these proportions north of Grand Junction were not being paid, but supposed that they were paid. They attribute the departure from the published tariff rates to the failure of the roads north of

Grand Junction to notify the Southern Railway of the existence and use of the 13-cent rate, and assert that that rate, although filed with the Interstate Commerce Commission, was kept effectively secret.

Whether the railroads north of Grand Junction sought to keep, and did keep, the 13-cent rate secret from the Southern Railway or not, is really immaterial, although the matter will be discussed later. It is certain that they did seek to keep it, and the rate combination in which is was used, secret from competing railroads. The methods used to secure that secrecy served also to keep the knowledge of the rate combination from independent oil shippers, and, as pointed out below, there is circumstantial evidence to show that the Standard Oil Company deliberately connived with the railroads for the purpose of thus concealing the rate from its competitors.

Mr. Hurlbut, who was general freight agent of the Illinois Central's southern lines in 1898, and who was one of the signers of the joint tariff issued by the Chicago & Eastern Illinois naming the 13-cent rate from Dolton to Grand Junction via Evansville, admits that it was the purpose of the railroads concerned to keep the knowledge of that rate from competing railroads, and that with this object in view shipments under it were blind-billed. "Blind-billing" means that the waybills prepared by the railroad in connection with each shipment, contrary to the almost universal custom, did not show the rate of freight or the amount of freight charges. This practice may be used to keep the knowledge of the rate from the employees of the railroad itself and consequently from others as well. (See testimony of various witnesses summarized, pp. 272–273, *post.*)

On February 24, 1898, shortly after the issue of the joint tariff by the Chicago & Eastern Illinois (tariff No. 10455), Mr. Hurlbut wrote to the general freight agent of the Chicago & Eastern Illinois suggesting blind-billing. (Petitioner's Exhibit 539.) His letter is in part as follows:

> Referring to your G. F. D. No. 10455, also your division sheet to be used in connection with same, covering rate on oil from Dolton to Grand Junction. In view of the circumstances which surround the making and application of the tariff and with which you are, of course,

> entirely familiar, we believe that it would be advisable to arrange to have the shipments waybilled through prepaid, which means not to show any rates or divisions of same, and have settlements as between your road and the E. & T. H. and our line made through the accounting department.

In accordance with this suggestion, the general freight agent instructed the local agent of the Chicago & Eastern Illinois at Dolton to blind-bill the oil, beginning March 1, 1898. (Petitioner's Exhibit 540.)

Mr. Hurlbut says that "the circumstances which surround the making and application of the tariff," mentioned in this letter, were the fact that the 13-cent rate had been made without conference with competing lines, and that it was the purpose of the blind-billing suggested by him to keep the knowledge of the rate from such competing railroads, particularly from the Louisville & Nashville, and thereby to get a large share of the traffic into the South by maintaining a rate lower than competing lines had or knew about. (Defendants' testimony, pp. 2032–2034, 2065, vol. 14.)

This practice of blind-billing was continued from that time till the 13-cent rate was canceled in 1905. The local agent of the Chicago & Eastern Illinois at Dolton (or Chicago), in preparing the waybills, entered no rate of freight, nor did he collect any charges. (See Petitioner's Exhibit 538 and Durand's testimony regarding the entries of rate and freight charges thereon, pp. 1572–1573, vol. 4.) For this reason he had no occasion to know what the rate was, although there is no evidence to show whether in fact he did or did not know it. He simply sent a list of the cars with their weights to the general office of the Chicago & Eastern Illinois, and collection was made by the general auditor directly from the Standard Oil Company. Copies of some of the bills rendered by the auditor to the Standard for the collection of these charges, together with the accompanying lists of shipments, were introduced by the Government. (Petitioner's Exhibits 541 and 546; see also Durand's testimony, pp. 1572–1584, vol. 4.)

It was apparently also for the purpose of better maintaining the secrecy which Mr. Hurlbut admitted was desired that the tariff of the Chicago & Eastern Illinois naming the 13-cent rate to Grand Junction was made to read not from

Chicago or Whiting, but from Dolton, Ill. The application of the rate from Whiting appeared only in a note on the lower part of the tariff. (See Petitioner's Exhibit 533.) The Chicago & Eastern Illinois also made its oil tariffs to East St. Louis read from Dolton, and, as will be shown later, these also were kept secret and the shipments under them blind billed. Dolton is a mere insignificant suburb of Chicago, but it is the junction of the Chicago & Eastern Illinois with the Chicago Terminal Transfer Railroad, which brought the oil from Whiting across the state line. It is about 17 miles from Chicago, and in the Chicago switching district. It is the general practice of the railroads, as appears from the testimony of numerous witnesses, to name rates on commodities generally from Chicago proper and to make them applicable from other points in the Chicago switching district by application sheets, or by some similar device. It is evident that a tariff reading from Dolton would be likely to attract little attention from the Interstate Commerce Commission or from ordinary shippers who overlooked the application from Whiting, and it seems very probable that that was the object in having these tariffs read from Dolton rather than from Chicago or Whiting.

It is evident that this blind billing and the use of Dolton as the initial point in the tariff not only tended to conceal the 13-cent rate from the Louisville & Nashville and other competing railroads, which Mr. Hurlbut says was the aim, but that they might also have the result of concealing that rate from the knowledge of the Southern Railway, which took the oil at Grand Junction, thus leaving that railroad ignorant of the fact that the proper proportions of the through rate from Evansville had not been collected north of Grand Junction, and causing it unwittingly to violate the law by applying its unpublished proportions south of Grand Junction. Although it is immaterial whether the Southern Railway knew about the 13-cent rate or otherwise, the evidence on this point may be briefly summarized.

Mr. Culp, vice-president and in charge of traffic of the Southern Railway, and Mr. Green, its freight traffic manager, testified emphatically that they did not know of the existence of this 13-cent rate until after it was canceled; that they did not know that the oil coming to Grand Junction

had not paid the regular proportions of the Evansville rate from Evansville to Grand Junction, and that had they known these facts they would not have applied the proportions of the Evansville rate south of Grand Junction on these shipments.

We wish particularly to call the attention of the court to the emphatic manner in which these witnesses characterized the use of the 13-cent rate with the unfiled divisions south of Grand Junction as an improper departure from the legally published rates. Whether they actually knew of the 13-cent rate or not, their testimony on this point is equally significant. Mr. Culp testified (pp. 1986–1989, vol. 4):

> Q. During the time since March 1, 1898, did you know that oil rebilled or billed by the Southern Railway from Grand Junction to destinations east and south of Grand Junction in the Southern States, had been shipped from Whiting, Indiana, to Grand Junction on a 13-cent tariff?—A. Not until comparatively recently.
>
> * * * * *
>
> Q. During the years prior to that time, from March 1, 1898, did you know that any such rate as a 13-cent rate was in existence?—A. Never.
>
> Q. I show you Petitioner's Exhibit 532. During the time this division sheet was in force, and the other division sheets, was oil billed from Grand Junction, by the Southern Railway, to destinations in the Southern States billed and collected for under these division sheets of the Southern Railway tariffs?—A. Yes.
>
> * * * * *
>
> Q. Now, the rate of freight that your company got under this shipment was the division of the Southern Railway's rate as shown in these division sheets?—A. The division of the Evansville rate to which the Southern Railway was a party.
>
> Q. Did you know during these years that this oil so shipped out of Grand Junction and settled for, as you state, had not prepaid the proportion of the Evansville rate from Evansville to Grand Junction?—A. I did not.
>
> Q. Did the division sheets in the Southern Railway tariffs authorize that division to your company unless it had already paid the Evansville proportion south of Evansville under that——A. No; the tariff showed both the proportion north of Grand Junction and south of Grand Junction.
>
> Q. And, in order for your company to apply the proportion east or south of Grand Junction, the oil shipped

should have paid the proportion between Evansville and Grand Junction?—A. Yes.

Q. Suppose it had already paid only a 13-cent rate from Whiting to Grand Junction, did you have any tariff authorizing you to ship that oil under these proportions stated in these tariff sheets?—A. No.

Q. Would you have so billed and collected the freight had you known it had paid only a 13-cent rate to Grand Junction?

A. We would not have accepted those proportions south of Grand Junction if we had known that less than the tariff or proper proportion from Evansville to Grand Junction was charged.

Mr. Green, freight traffic manager of the Southern Railway, testified as follws (pages 2021–22, vol. 5):

Q. Did you know that the oil shipped by the Standard Oil Company to Grand Junction and reconsigned over the Southern Railway and its connections on the divisions of these rates, had paid a 13-cent rate from Whiting to Grand Junction?—A. I did not.

Q. Did you know it had paid any other than the proportion shown on your division sheet and your Southern Railway tariffs from Evansville to Grand Junction?—A. I did not.

Q. What would you have done if you had known it?—A. I would not, certainly, since I have been responsible for the rates of the Southern Railway, have permitted a charge from Grand Junction, which, added to the charge up to that point, would have defeated the published tariff rates.

Q. You mean the published tariff rates from Evansville?—A. Yes, sir; or any other point.

* * * * *

Q. Did the Southern Railway have any tariff on which oil could be shipped out of Grand Junction which had paid a 13-cent rate to Grand Junction?—A. Nothing except a full local tariff from Grand Junction.

Q. Class tariff, you mean?—A. Yes, sir; that is, unless we had some commodity rates. I don't know. Whatever rate we may have had published from Grand Junction proper, whether a class or commodity rate, should have applied.

Q. Those were not the rates which were actually applied to this traffic?—A. The rates applied to the traffic—that is, the proportions of the rates applied to the traffic—so far as the Southern Railway is concerned; were the proportions of the Evansville rate contained in those division sheets.

Q. Those were not the rates that you refer to as your local rates out of Grand Junction?—A. No, sir.

Q. Did you know, during the time these shipments were being made, whether the oil was blind-billed to Grand Junction?—A. I did not.

Q. Is that a usual way of billing products?—A. I don't know of any blind-billing in existence anywhere.

Q. What is the customary way of billing merchandise and goods, freight of all kinds?—A. Well, we have what we call overhead billing, solid billing, through billing, inter-line billing.

Q. I mean as to whether the rate is shown in the billing.—A. As a rule, the rate is shown in the waybill.

As bearing upon the contention of Mr. Culp and Mr. Green, that they did not know of the 13-cent rate, it may be noted that the Southern Railway first took control of the line east of Grand Junction, which was formerly the Memphis & Charleston, on March 1, 1898, the very day when the arrangement for blind-billing the oil from Whiting to Grand Junction over the Chicago & Eastern Illinois, the Evansville & Terre Haute, and the Illinois Central roads was put into effect. Even though the officers of the Memphis & Charleston road might previously have had knowledge of the 13-cent rate, that knowledge may not have come to the officers of the Southern Railway. (Culp, p. 1980, vol. 4.)

It may be noted further that a peculiar arrangement with regard to the method of collecting the freight charges was introduced, or rather continued, by the Southern Railway at the request of the Standard Oil Company, which method may also have served to keep the Southern Railway in ignorance as to the charges which had been paid north of Grand Junction. It is ordinary practice, where a commodity is shipped on a joint through rate, such as the rate from Evansville via Grand Junction to southern points, and where the charges are to be prepaid by the shipper for the shipper to prepay to the originating line the entire charge from the point of origin to destination, the initial line in turn paying over the proper proportion to the connecting line at the junction point. (Culp, p. 1990, vol. 4.) That is, it would be the ordinary custom for the Standard Oil Company to pay to the Illinois Central Railroad the entire rate from Evansville to a southern point (say Birmingham) and for the Illinois Central to pay over to the Southern Railway the proportion of this rate

between Grand Junction and Birmingham. In this case, however, according to the testimony of Mr. Culp, Mr. Howard Page, freight traffic manager of the Standard Oil Company, in 1898 requested the Southern Railway to continue an arrangement previously in force with the Memphis & Charleston Railroad, by which the Standard Oil Company should pay directly to the Southern Railway the proportion between Grand Junction and destination. Mr. Page stated, according to Mr. Culp, that the proportion accruing to the Illinois Central Railroad would also be prepaid to that road, and that the arrangement would be a convenience to the Standard Oil Company. It is easy to see that the possible "convenience" to the Standard consisted in keeping the Southern Railway in ignorance of the fact that the oil had not paid the proper proportion north of Grand Junction. (Culp, pp. 1987–1990, vol. 4.)

Mr. Seabrook, who was local agent jointly of the Southern Railway and the Illinois Central at Grand Junction during the entire period during which the 13-cent rate was in force (whether over the Illinois Central or jointly over the Chicago & Eastern Illinois, the Evansville & Terre Haute, and the Illinois Central), testified that at no time did the waybills he received at Grand Junction on this oil show any rate of freight, that he did not know that the rate paid was 13 cents, had never seen any of the 13-cent tariffs, and knew nothing about them. (Seabrook, pp. 2005–2010, vol. 4.)

Still further evidence bearing on the ignorance of the Southern Railway regarding the 13-cent rate will be presented in another connection (see pp. 225–231, *post*).

The only evidence put in by the defendants to contradict the testimony of the Southern Railway representatives that they did not know about the 13-cent rate was of a purely inferential character, and at the same time highly techinal. Before proceeding to consider it, we desire to emphasize that it is entirely immaterial, with respect to the secrecy and illegality of this rate combination, whether the Southern Railway connived in it or not. If that railroad did know that the 13-cent rate was being used north of Grand Junction, instead of the proportions of the published rate from Evansville, it was knowingly violating the law in using the unpublished and unfiled proportions south of Grand Junc-

tion. If, on the other hand, the roads north of Grand Junction did effectively conceal the 13-cent rate from the Southern Railway, with a view to securing the application of those unpublished proportions south of Grand Junction, then these roads were conspiring to bring about a violation of the published tariffs, and it is no excuse that they sought to keep their own skirts clear by filing the 13-cent rate, in the inconspicuous and misleading form in which it was filed, with the Interstate Commerce Commission. In either case, the Standard Oil Company, which necessarily knew that the divisions which were applied south of Grand Junction were not published rates and that they could not properly be used except where the proper proportions of the published rates had been paid north of Grand Junction, was clearly and unmistakably guilty of a violation of the law. Mr. Felton admitted that it was not the practice of railroads to file division sheets. These division sheets were plainly such; they showed the separate proportions accruing to the several railroads as parts of a total stated rate; those issued after 1901 stated on their face that they were divisions of the rates from Evansville covered by the published tariffs to which they gave specific reference by number. Mr. Felton, or any other experienced railroad man, necessarily knew that the use of such unfiled proportions in combination with rates less than the proper proportions of the connecting line would result in defeating the published tariff combination.

We now take up briefly the testimony of the Standard tending to show the connivance of the Southern Railway. By purely inferential arguments Mr. Felton and Mr. Hurlbut sought to show that Mr. Seabrook, the agent at Grand Junction, must have known that the 13-cent rate was being applied from Dolton to Grand Junction.

Mr. Hurlbut called attention to the following language in the tariffs of the Illinois Central, naming the 13-cent rate (Defendants' Exhibit 169): "Allow the C. & C. T. Ry. $3 per car (regardless of weight), from Whiting, Ind., to Riverdale, and waybill from Riverdale to destination at remainder of rate." He claimed that this notification meant that the waybills prepared by the Illinois Central were to show the rate. He admitted, however, that he did not actually know

how the oil was billed or whether other instructions were given to the agents on a separate document. (Defendants' testimony, pp. 2035, 2064–2066, vol. 14.)

Mr. Felton made a somewhat similar argument, based on anguage in the tariff of the Chicago & Eastern Illinois and the division sheets thereto, seeking to show that, if the instructions thereon were carried out, the waybills reaching Grand Junction via this route, prior to March 1, 1898, would have shown the rate. He admitted, however, that he did not know whether other instructions were given in separate papers, or how the oil was actually billed, or even whether there were any shipments via this route prior to March 1, 1898. (Defendants' testimony, pp. 1783–1789, 1808–1810, vol. 14.)

The Government introduced a large number of memoranda and letters from the files of the Chicago & Eastern Illinois Railroad, which seem to us to show clearly that the rate from Whiting to Grand Junction over this railroad was introduced at the instance of the Standard Oil Company and that the Standard was a party to the secrecy thereof. They apparently bear also upon the question whether the Southern Railway had knowledge of the 13-cent rate to Grand Junction. These papers are competent as being part of the acts of the railway company in its conspiracy with the Standard Oil Company. They are all from the files of the railroad, as testified by Mr. Reilly, the present general freight agent of the Chicago & Eastern Illinois, who produced them, identified the handwriting of most of those which are in manuscript, and stated the positions held by the various men named in them. They are evidently one interrelated series, and the identification of the handwriting of part of the papers and the fact that the others appear in the files in immediate conjunction with those so identified sufficiently proves all of them.

The first of these papers (Petitioner's Exhibit 1011) consists of a mimeograph copy of the Chicago & Eastern Illinois Tariff No. 10084, effective September 15, 1897, which, as already stated, was the first tariff of this railroad making the 13-cent rate from Dolton to Grand Junction. Penciled at the bottom of this tariff was the following note, addressed to Mr. Carpenter, the president of the Chicago & Eastern

Illinois Railroad, and signed with the initials of William Campbell, who was the general freight agent of the railroad:

> Mr. CARPENTER:
>
> This arranged with President Barlow, E. & T. H., and Mr. Howard Page, Standard Oil Co. Mr. Barlow arranged with Mr. Markham of the Ill. Central. Mr. Barlow informed me had talked it over with you.
>
> 9/15/97. WM. C.

This note shows clearly that the tariff was arranged at the instance of Mr. Howard Page, then general traffic manager of the Standard Oil Company. It is significant, also, as showing the importance of these transactions, that the presidents of the Eastern Illinois and Evansville & Terre Haute railroads had talked the matter over together, not leaving it simply to the general freight agents or other subordinate officers.

Another paper in this series (Petitioner's Exhibit 1030) is a telegram from W. D. Hurlbut, general freight agent at Louisville of the Illinois Central Railroad, to William Campbell. The date is evidently January 21, 1898, "21" appearing on the telegram and other papers dated January 21, 1898, referring thereto. This telegram states that the present rate on oil from Whiting to Grand Junction will be canceled taking effect January 30. To this telegram Mr. Campbell replied by telegraph (Petitioner's Exhibit 1029) asking Mr. Hurlbut what divisions he proposed after January 30, to which Mr. Hurlbut telegraphed in reply (Petitioner's Exhibit 1026), under date of "Jan. 21," that he understood the rate from Whiting to Grand Junction after January 30 should be 36 cents, which was the lowest combination which could be figured (as against 13 cents, the then existing rate). On the same day the general freight agent of the Chicago & Eastern Illinois, Mr. Campbell, wrote to Mr. F. P. Jeffries, general freight agent of the Evansville & Terre Haute, which, it will be remembered, was a party to the 13-cent rate and had the transportation of the oil from Terre Haute to Evansville. In this letter (Petitioner's Exhibit 1028) Mr. Campbell stated:

> I have seen Mr. McClintock of the Standard Oil Co. this afternoon and he informs me confidentially that the Louisville Southern takes charge of the Memphis &

Charleston R. R. on Feb. 1st, and the business after that date will go forward via the Southern Railway and we will get none of it. In all probability Mr. Barlow is advised of this, but would suggest, as he and Mr. Page made the deal, it would be well to give him the information anyway. There will be a big movement of the oil from Whiting between now and the 28th to Grand Jct., and Mr. McClintock urges us to rush it through and have it at Grand Jct. not later than the 30th instant.

This letter shows, not only that Mr. McClintock of the Standard Oil Company was taking part in these transactions, but that a significant feature thereof was the transfer of the control of the Memphis & Charleston Railroad to take place on February 1. This would seem to indicate that the Standard Oil people and the railroads from Whiting to Grand Junction did not desire the Southern Railway to know of the 13-cent rate, and also to indicate that the Memphis & Charleston Railroad had been a party to the entire scheme. The arrangement to rush a large number of cars to Grand Junction before the 30th of January seems also to be with a view to concealing the matter from the Southern Railway.

On this same day the general freight agent wrote to the superintendent of the Chicago & Eastern Illinois, instructing him to rush forward the cars to Grand Junction (Petitioner's Exhibit 1027).

In accordance with the arrangement suggested by Mr. Hurlbut, the Chicago & Eastern Illinois Railroad notified the Interstate Commerce Commission that the tariff from Dolton to Grand Junction would be canceled, effective February 1 (Petitioner's Exhibits 1021 and 1023). In connection with this cancellation notice appears a memorandum (Petitioner's Exhibit 1025) in manuscript, dated "1/22" addressed to Wm. C. and signed H. W. N., stating: "Have wired Com. to-day canceling trf. Feb. 1—Can not make it Jan. 30." On this same sheet is another memorandum initialed by William Campbell and addressed to H. H. Rhodes, assistant general freight agent, as follows:

H. H. R.
Please note the meat in the cocoanut.
1/22/98. WM. C.

We do not know what the "meat in the cocoanut" was unless it be the fact of the transfer of the control of the Memphis & Charleston Railway to take effect February 1. The use of this phrase certainly seems significant.

Although this tariff of the Chicago & Eastern Illinois from Dolton to Grand Junction was canceled effective February 1, another tariff, and containing the same rate, was issued shortly thereafter. Various memoranda from the files of the Chicago & Eastern Illinois Railroad show that this new tariff was issued at the instance of the Standard Oil Company, which made all the arrangements between the connecting lines. One memorandum on this subject, dated January 24, addressed to William Campbell and signed with the initials of S. J. Cooke, who was an assistant general freight agent, was as follows (Petitioner's Exhibit 1020):

1/24.

WM. C.

McClintock called up and requested that no action be taken in regard to canceling tariff to Grand Junction until he sees you.

S. J. C.

Another memorandum, of the next day, signed by the initials of Wm. Campbell, was as follows (Petitioner's Exhibit 1019):

1/25/98.

Mem.

Saw McClintock, who said he expected to get the arrangement restored soon. For us not to do anything for the present.

WM. C.

Another memorandum (Petitioner's Exhibit 1013), in typewriting, is from Mr. Cooke to Mr. Campbell, as follows:

MR. CAMPBELL:

Mr. McClintock called this afternoon and stated that we could reissue the tariff on oil to Grand Jct., Tenn., to take effect five days from to-morrow, Feb. 3rd, everything having been arranged. He did not impart any further information. I understood him to say that he had informed Mr. Carpenter.

S. J. C.

Appended to which is the following:

H. H. R.
Please reissue.
2/3/98. WM. C.

Here is a memorandum which shows clearly that the Standard Oil Company was arranging the scheme, and did not impart all the information regarding it to Mr. Cooke.

On the same day Mr. Campbell wrote to Mr. Jeffries, of the Evansville & Terre Haute, as follows (Petitioner's Exhibit 1018):

> I have just seen Mr. McClintock of the Standard Oil Co. and he has requested us to reinstate our proportional rate of 13 cts. on oil from Whiting, Ind., to Grand Junction, Tenn. Rate will be issued to-day, effective the 8th instant and will expire on the 25th instant, as we understand on March 1st the Southern Railway takes charge of the Memphis & Charleston. Will you please inform your president, Mr. Barlow.

Here again the reference to the transfer of the Memphis & Charleston to the Southern Railway, which had been postponed from February 1 to March 1, is significant in its bearing upon the secrecy of this rate combination and upon the question whether the Southern Railway had knowledge of the 13-cent rate.

Still another memorandum, from Mr. Cooke to Mr. Campbell, under date of February 4, was as follows (Petitioner's Exhibit 1012):

WM. C.:
H. H. R. says McClintock gave you some later instructions as to manner of issuing and handling the tariff and wants to know what they are.

S. J. C. 2/4.

Here it appears that Mr. McClintock was not merely asking the railroad to do things but was instructing it. Penciled on this latter memorandum appears the following:

Mr. CAMPBELL:
This has only been sent to I. C. C. Please let me know if this is O. K.

B. H. H.
2/4/98.

The initials of B. H. H. are those of Mr. Harris, a clerk in the freight department of the Chicago & Eastern Illinois Railroad (Reilly, vol. 20, p. 369). On the back appears the following:

B. H. H.:
This is OK. H. H. R. will explain.
2/5/98. W. C.

This appears to indicate that the tariff was not sent, as would be expected in the regular course of business, to the Southern Railway as a connecting line, or to other parties who might usually receive such a tariff, but only to the Interstate Commerce Commission; and it bears out the Government's contention that the filing of this tariff was a mere device, with the object of keeping clear the skirts of these railroads while at the same time bringing about a secret violation of the law through the use of the unfiled divisions south of Grand Junction.

Another exhibit (Petitioner's Exhibit 1017) is a letter from Mr. Campbell, general freight agent, to Mr. Jeffries, of the Evansville & Terre Haute, dated February 5, 1898, which states:

> I saw Mr. McClintock of the Standard Oil Co. yesterday. We arranged to make our proportional tariff on oil, Whiting and Dolton to Grand Junction, Tenn., to show no date of expiration. This, therefore, will cancel that part of my letter (evidently referring to Petitioner's Exhibit 1018) stating that tariff would expire Feb. 25th, 1898.

It seems quite likely that this change, by which the tariff was continued in effect after March 1, instead of terminating on February 25, was the result of the arrangement which Mr. Page, according to Mr. Culp's testimony, made about that time with the Southern Railway, by which the Southern was to collect directly from the Standard Oil Company its proportions of the rates from Grand Junction to the points of final destination (see p. 223, *ante*).

Finally, it appears that the Standard Oil Company not only initiated this tariff, but also was a party to the scheme of blind-billing which, it will be recalled, was put in effect on March 1, and concerning which Mr. Hurlbut, of the Illinois Central, had written to the Chicago & Eastern Illi-

nois on February 24. Mr. Durand testified (vol. 20, pp. 466–67) that when he examined the files of the Chicago & Eastern Illinois Railroad in 1905 or 1906 he found, in connection with some of the other papers introduced by the testimony of Mr. Reilly, the following memorandum, of which he made a copy at the time:

> H. H. R.:
> I have just seen Mr. Markham, of the Illinois Central, in company with Mr. McClintock, and through billing arrangements from Dolton to Grand Junction can be arranged on the oil, taking effect to-morrow, March 1st. The E. & T. H. has wired that the arrangement is satisfactory to it, and Mr. Markham says it will be entirely satisfactory to the Ill. Central. He has the matter up with Mr. Hurlbut and Mr. Fairman. Will you therefore please make arrangements for the proper instructions to agent at Dolton at once?
>
> WM. C. 2/28/98.

Mr. Reilly testified that he had made a careful search for this memorandum in the files of the Chicago & Eastern Illinois Railroad and could not find it; and the copy is therefore competent. The "through billing arrangements" referred to in this memorandum are evidently the arrangements for blind-billing suggested in Mr. Hurlbut's letter of February 24 (see pp. 217–18, *ante*), and which were actually put into effect on March 1, the very day when the Southern Railway took control of the Memphis & Charleston. Mr. McClintock, according to this memorandum, was a party to this arrangement, and there seems little doubt, in fact, that it was suggested by the Standard Oil Company, just as the arrangements for the issuing of the tariff were made by that company.

The conclusion seems to us therefore entirely clear that the Standard Oil Company had not only knowledge of the secrecy of this rate combination, but itself initiated the scheme by which it should be secret. And it also seems highly probable from this evidence that the statement of Mr. Culp and Mr. Green, of the Southern Railway, that they did not know of the existence of the 13-cent rate, is a truthful statement, and that a part of the scheme of violating the law was to keep the knowledge of the 13-cent rate from that railroad, in order that it might apply south of Grand Junc-

tion its proportions of the Evansville rate, supposing that north of Grand Junction the corresponding proportions had been paid.

By this secret rate combination, based on the 13-cent rate from Whiting to Grand Junction, the Standard for years was able to ship oil to a large number of points throughout practically all of the Southern States east of the Mississippi River at rates from 3 to 16½ cents less than the published tariff rates, the difference in most cases exceeding 7 cents and in a very large number of cases exceeding 10 cents per 100 pounds.

Petitioner's Exhibit 585 was compiled by Mr. Schindler from the complete records of the shipments of oil originating at Whiting and reconsigned over the Southern Railway from Grand Junction during the months of December, 1904, and November, 1905. (Schindler, pp. 1671–1672, vol. 4.) It shows, for these two months only, the shipment of 314 cars, on which the difference between the secret rate and the published tariff rate was $17,297.20, or an average of 11.01 cents per 100 pounds. The statement shows all of the destinations and compares the legal rate to each destination with the actual rate paid. If the shipments for all the months of the year averaged as great as during these two months, the difference between the legal rate and the rate paid by the Standard Oil Company would have amounted to approximately $100,000 in a year. As a matter of fact, the shipments for many years have been exceedingly heavy; according to the testimony of Mr. Seabrook, averaging from 115 to 120 cars per month, this number being given only from recollection (p. 2009–2010, vol. 4.)

Mr. Schindler testified that he found in the records of the railroads waybills of 1,522 cars shipped during 1902 on this rate combination, 1,519 shipped during 1904, and 1,350 shipped during the first eleven months of 1905. (Schindler, p. 1670, vol. 4.)

It appears strange that the Illinois Central should give up the entire revenue from Whiting to Grand Junction and accept only that part of the revenue for the haul from Evansville to Grand Junction. Mr. Hurlbut, who was the general freight agent of the Illinois Central, says this change

was insisted upon by the Standard Oil Company and the railroad had no choice. (Defendants' testimony, pp. 2064–65, vol. 14.)

DISCRIMINATION IN OPEN RATES INTO THE SOUTH.

RATES FROM WHITING COMPARED WITH INDEPENDENT REFINING POINTS.

Not only did the Standard Oil Company enjoy extraordinarily low rates from Whiting into the South by means of these secret Evansville and Grand Junction combinations, but even the open rates from Whiting into the South were discriminatory as compared with the rates from independent refining points to the same destination; and this discrimination continued after the cancellation of the secret Evansville and Grand Junction rates in 1905.

Referring again to Petitioner's Exhibit 586, it will be noted that this exhibit shows not merely the secret rate combinations from Whiting to the points specified, but shows also the open rates and the short-line distances over which such open rates would apply, comparing them with the rates and distances from Pittsburg, Cleveland, and Toledo. It will be seen that to a large number of towns the open rate from Whiting was 3½ cents per 100 pounds less than the rate from Toledo, 4 cents less than that from Cleveland, and 7½ cents less than that from Pittsburg. This difference is due to the fact that the rates from Louisville and Evansville to points in the South were in most cases 4½ cents per 100 pounds less than the rates from Cincinnati, as appears in the second part of Petitioner's Exhibit 586 (vol. 10, pp. 1562–63). The open rate from Whiting to Evansville and Jeffersonville (on the north side of the Ohio River, opposite Louisville), the two nearest Ohio River crossings, was 11 cents, and the open rate from Toledo to Cincinnati 10 cents, and from Cleveland to Cincinnati 10½ cents, Cincinnati being the nearest and natural gateway for shipments to the South from these two points. The rate from Toledo and Cleveland to Louisville and Evansville was higher than to Cincinnati, so that the refiners at these two points could not get any lower combinations than by way of Cincinnati.

The effect of this difference in the rates south of the Ohio River in giving an unfair advantage to the Standard Oil

Company on shipments from Whiting appears plainly by a comparison of the rates with the distances, as shown in Petitioner's Exhibit 586. Take, for example, Chattanooga. The open rate from Whiting, via Louisville or Evansville, was 39½ cents for a distance of 595 miles, while from Toledo, a shorter distance—549 miles—the rate combination via Cincinnati was 43 cents, and from Cleveland, a distance of 582 miles, 43½ cents. Again, to Atlanta, the rate from Whiting, 733 miles, was 44 cents; from Toledo, 687 miles, 47½ cents, and from Cleveland, 720 miles, 48 cents. Although the distance from Pittsburg to many of these points is somewhat greater than from Whiting, the disparity of the rates is so marked that the rate per ton per mile is materially lower from Whiting than from Pittsburg.

Mr. Felton sought to explain how this disparity in rates came about. He showed that at an early date, before the establishment of the Whiting refinery, the rate from Cleveland, Pittsburg, Toledo, and similar points, then the principal refining centers, to Louisville and Evansville was higher than to Cincinnati, and that, in order to equalize the total charge from these points of origin to southern destinations, the roads leading south from Louisville and Evansville made their rates correspondingly lower than the rates from Cincinnati. Thus, the rate from Cleveland to Cincinnati in 1888 was 8½ cents, and from Cleveland to Louisville 13 cents, a difference of 4½ cents corresponding to the difference of 4½ cents already mentioned in the rates south from Louisville and Cincinnati respectively. (Defendants' testimony, pp. 1789–1795, vol. 14.)

While this doubtless is the actual reason why the rates from Louisville and Evansville were originally made lower than the rates from Cincinnati, Mr. Felton admitted, on cross-examination (p. 1795, vol. 14), that after the establishment of the Whiting refinery, which shipped enormous quantities into the South, the conditions were changed, and that if the roads south from Cincinnati had wished to obtain traffic coming from Whiting on equal terms, they "could" have reduced their rates to equal those from Evansville and Louisville, the rate from Whiting to Cincinnati, Evansville, and Jeffersonville (opposite Louisville) being the same. That the roads south from Cincinnati did not reduce their

rates can hardly be explained by any other consideration than that Cincinnati was the natural gateway for the independent refineries of Ohio and Pennsylvania, and the continuation of this difference in rates from Cincinnati and from Louisville and Evansville was practically a discrimination against the independent refineries.

It may be noted that the correction of certain published rates from Whiting, as shown in Petitioner's Exhibit 586, which Mr. Felton claims should be made, as shown in Defendants' Exhibit 146, does not substantially change the situation as to this discrimination. To most of the points no correction is offered in the rates, and to most of the others the difference between the rates quoted by the defendants and the rates quoted in Petitioner's Exhibit 586 is only ½ cent per 100 pounds. Indeed, the defendants' exhibit shows, as to a considerable number of towns, lower open rates from Whiting than those put in evidence by the Government, thereby increasing the discrimination. The testimony of Mr. Schindler shows further that some of the alleged rates contained in Defendants' Exhibit 146 are in error. (See Schindler, p. 429, vol. 20.)

Aside from the discriminations in open rates into the South based on combinations at the Ohio River gateways, Petitioner's Exhibit 586 shows also that the published through rates to what are known as "Mississippi Valley points," namely, certain points along the Mississippi River and along the Gulf of Mexico, were also relatively lower from Whiting than from the independent refining points. The points in Petitioner's Exhibit 586 to which such through rates were made in the published tariffs are Mobile, Ala.; Natchez, Vicksburg, and Greenville, Miss.; and New Orleans and Baton Rouge, La. The rate from Whiting to all these points was 23 cents, while the rate from Toledo was 32½ cents, from Cleveland 33 cents, and from Pittsburg 36½ cents. This difference in rates is much greater than the difference in distances would justify. For instance, to New Orleans, the distance from Whiting is 912 miles, and the rate of 23 cents amounts to 5 mills per ton per mile; the distance from Toledo is 1,041 miles, and the rate of 32½ cents amounts to 6.2 mills per ton per mile; while the rate from Pittsburg was equal to 6.4 mills per ton per mile. In view of the general

practice of railroads to make the rate per ton per mile lower for longer than for shorter hauls, this difference in rate per ton per mile is conspicuous. Substantially the same difference in rates per ton per mile existed with reference to the other "Mississippi Valley points."

RATES FROM PARKERSBURG COMPARED WITH MARIETTA.

Still another series of discriminations in published rates existed as between the Standard refinery at Parkersburg, W. Va., and the independent refineries at Marietta, Ohio, only 14 miles apart. A comparison of the rates from these two points, respectively, to numerous destinations in the South appears in the second part of Petitioner's Exhibit 586 (vol. 10, pp. 1562–63). The defendants put in an exhibit (Defendants' Exhibit 146) showing certain lower rates than those shown in the petitioner's exhibit, namely, from both Parkersburg and Marietta to Greensboro, Raleigh, and Wilmington, N. C. (the alleged rates to Charleston, S. C., in said defendants' exhibit being in error—see vol. 20, p. 429), but the difference in favor of Parkersburg, as shown by the rates so quoted, is even greater than the difference in the rates stated in Petitioner's Exhibit 586. Thus, from Parkersburg to Raleigh the rate was 38½ cents, or 6½ cents lower than from Marietta to Raleigh. From Parkersburg to Wilmington the rate was 28½ cents, as compared with 35 cents from Marietta. From Parkersburg to Savannah the rate was 39½ cents, as against 48½ cents from Marietta. To most of the interior points in the South, such as Atlanta and Birmingham, the rate from Parkersburg was 3½ cents lower than from Marietta. Mr. Felton explains this difference of 3½ cents to such interior points as arising from the fact that shipments from Parkersburg went by way of Lexington, Ky., and shipments from Marietta by way of Cincinnati, Ohio. The rate from Parkersburg to Lexington, 9 cents, was the same as from Marietta to Cincinnati. In accordance with general railroad practice, he stated, the rates from Lexington to the South were the same as from Louisville, being in the case of oil 3½ cents lower than the rates from Cincinnati (defendants' testimony, pp. 1728–29, vol. 14). Mr. Felton admitted, however, that he knew of no reason in railroad practice why Marietta refineries should

not have had the same rate to Lexington as the Parkersburg refinery, or, in fact, why the rates generally from Marietta to points in the South should not have been the same as from Parkersburg, "if the Marietta people had made application for them" (p. 1733, vol. 14). The existence, almost throughout the country, of such differences in rates, whether open or secret, in favor of the Standard shipping points as against the independent shipping points, however, goes strongly to indicate that it is not the lack of application for rates on the part of independent refineries which results in their having to pay higher rates.

SECRET AND ILLEGAL EAST ST. LOUIS RATES.

GENERAL DESCRIPTION.

For ten years or more, prior to the investigation by the Bureau of Corporations in 1905, the Standard Oil Company shipped enormous quantities of oil from Whiting to East St. Louis over three different railroads, at a rate of either 6 or 6¼ cents per 100 pounds. These shipments were destined not merely to East St. Louis proper, but also to St. Louis and throughout the Southwest. These rates were relatively far lower than the rates from competing independent refining points farther east. Moreover, the evidence shows that they were both technically illegal and effectively secret. The 6-cent rate, which was made by the Chicago & Alton and the Chicago, Burlington & Quincy railroads was never filed with the Interstate Commerce Commission, and the only legally filed rate of those roads throughout the period was 18 cents. Extraordinary pains were taken, particularly by the Alton, in the methods of handling the freight to conceal the rate. During part of the time, but only part, in which the Chicago & Eastern Illinois Railroad was charging 6¼ cents from Whiting to East St. Louis, it had a tariff filed with the Interstate Commerce Commission, which read from Dolton, Ill., to East St. Louis, named a rate of 6¼ cents, and provided in a note for its application from Whiting. This railroad also, however, used peculiar methods to conceal the rate, and its chief traffic officer admitted that it was intended to be kept secret, at least from competing railroads.

The defendants put in much evidence seeking to show that the use of the unfiled rates of the Alton and Burlington on interstate shipments was in accordance with a general practice of railroads prevailing at that time, which practice was not considered illegal. The practice of violating the law is, of course, no excuse in law for any particular violation; but in the present equity case, in which the charge is a conspiracy between the railroads and the Standard Oil Company to give the latter discriminating rates, such a practice might go to show good faith in the use of this 6-cent rate. A careful consideration of the evidence, however, will convince the court of the actual intent of the railroads in this instance to make a secret discrimination in favor of the Standard Oil Company.

It is not contended by the Government that any other shipper than the Standard shipped oil either from Whiting or from Chicago (which would naturally take the same rates) to East St. Louis at a rate higher than that paid by the Standard. No evidence appears of any shipments whatever between these points by other concerns. Although there is no independent refinery at Whiting or Chicago, or in the vicinity, there were independent jobbers at Chicago. As the only rate which, in view of the secret methods referred to, was likely to come to the knowledge of such independent jobbers was the 18-cent rate (or, during part of the time, perhaps, a 10-cent rate of the Alton hereafter referred to), it was natural that jobbers having occasion to deliver oil in East St. Louis or beyond should direct the shipment of the oil from the refineries farther east, from which the rates were relatively lower than an 18-cent rate from Chicago. Had the jobbers known of this 6-cent rate, they doubtless would have made use of it. The principal discrimination involved in the existence of this rate was against the independent shippers at eastern refining points.

The remarkable character of this discrimination is shown by a comparison of the rates from Whiting with the rates from Pittsburg, Cleveland, and Toledo, the principal independent refining points from which oil would naturally be shipped to East St. Louis, taking into consideration the relative distances. (Petition, vol. A, p. 73; Schindler, p. 1685, vol. 4.)

Rates to East St. Louis.

From—	Rate.	Distance.	Rate per ton per mile.
	Cents per cwt.	*Miles.*	*Cent.*
Pittsburg	24½	613	0. 80
Cleveland	19½	522	. 75
Toledo	17	433	. 79
Whiting	6 or 6½	281 to 345	0.35 to . 43

It is a general principle, to which there are relatively few exceptions, in the making of rates that the longer the haul the less the rate per ton per mile. In this case, the rates from the more distant independent refining points were per ton per mile from 75 to 90 per cent higher than from Whiting. Assuming that the rates from Pittsburg, Cleveland, and Toledo were normal rates, ordinary railroad practice would have called for a rate of, say, 12 or 13 cents from Whiting as against the actual charge of 6 cents. The enormous advantage which Whiting thereby enjoyed over competing points may thus be realized.

Mr. Felton, of the Standard Oil Company, however, undertook to show that such a disparity between the rates from Whiting to East St. Louis and the rates from independent refining points to East St. Louis was not due to discrimination in favor of the Standard Oil Company, but to the conditions of competition among the railroads. He testified that there was peculiarly strong competition on traffic generally between Chicago and East St. Louis and that the rates on most commodities between those points were very low.

He introduced an exhibit (Defendants' Exhibit 182) showing the rates on certain commodities from Pittsburg to East St. Louis and from Chicago to East St. Louis, respectively, together with the rates per ton per mile, the rate for the shorter haul from Chicago to St. Louis per ton per mile being in all the cases he listed lower than the rate per ton per mile from Pittsburg. It is noteworthy, however, that of the fifteen articles which he mentioned there is not one in which the disparity in rates per ton per mile is as great as in the case of oil, and only two in which it even approaches the disparity on oil. Moreover, these commodities were carefully selected by Mr. Felton and may be presumed

to be practically the only ones he could find in which the rate per ton per mile for the shorter haul was lower than for the longer haul. Furthermore, many of the commodities which he lists are commodities which would not ordinarily be shipped from Pittsburg to East St. Louis at all, and the rates which he cites on such commodities are mostly class lrates and not special commodity rates. Where there is ittle or no traffic the commodity is allowed to remain subject to class rates which are often practically merely nominal with respect to it. After making inquiries of railroads Mr. Felton was able to name only six out of the fourteen commodities listed in this exhibit of which any appreciable quantities were shipped from Pittsburg to East St. Louis, and he did not undertake to show even as to these that the movement was at all comparable with the movement from Chicago. (Felton, vol. 14, p. 1817.) The testimony of Mr. Schindler shows that the rate quoted by Mr. Felton on lumber from Chicago to East St. Louis is in error, and is the rate from East St. Louis to Chicago, which is considerably lower than in the opposite direction, the actual rate from Chicago being higher per ton per mile than from Pittsburg, instead of lower. (Vol. 20, p. 430.)

Mr. Schindler also put in evidence, on behalf of the Government, an exhibit (Petitioner's Exhibit 1037) which compares the rates on a large number of commodities from Pittsburg to East St. Louis with the rates from Chicago to East St. Louis, and on all of these commodities the revenue per ton per mile for the longer haul is less than for the shorter. This list includes nearly forty commodities, many of which are of much importance, and many of them undoubtedly are shipped in large quantities from Pittsburg.

That the rate of 6 cents on oil was discriminatory as compared with the rates from Pittsburg, Cleveland, and Toledo is practically conclusively proved by the action of the railroads in promptly increasing it to 10 cents as soon as it was discovered by the Bureau of Corporations.

THE 18-CENT RATE THE LEGAL TARIFF RATE.

We first call the court's attention to the evidence showing that the 18-cent rate was the only legally filed rate on oil from Whiting to East St. Louis over the Chicago & Alton and Chicago, Burlington & Quincy roads, or indeed over any

road unless it be considered—which we do not admit—that during part of the time the Chicago & Eastern Illinois rate was legally filed. This rate of 18 cents was a class rate. It is the custom of railroad companies, as appears from the evidence, to divide all commodities into a number of classes and to name rates applicable to these classes. Railroads also name so-called commodity rates, which apply exclusively upon individual commodities named. The issue of a commodity rate by a railroad supersedes, so far as that railroad is concerned, the class rate on that commodity; but in the absence of a legally issued commodity rate the class rate is the legal rate.

For many years all three of these railroads (the Chicago & Alton, the Chicago, Burlington & Quincy, and the Chicago & Eastern Illinois), as well as all other roads connecting those points, have joined in the making and publication of joint or association tariffs, naming rates from Chicago and neighboring points to East St. Louis. The latest issue of this tariff, effective during the period covered by the shipments in question, was known as Chicago and St. Louis Traffic Association Tariff No. 24 (I. C. C. No. 3), effective May 15, 1899 (Petitioner's Exhibit 558). This tariff states that the rate on fifth-class commodities from Chicago to East St. Louis is 18 cents per 100 pounds. It also states that it is governed by the Illinois Classification and, according to that classification, the fifth-class includes petroleum and its products. (Durand, 1603, vol. 4.)

This tariff and also the classifications were filed with the Interstate Commerce Commission. This tariff, reading from Chicago, was also made applicable from Whiting. During the later years under consideration this was done by means of tariffs, known as application sheets, filed with the Interstate Commerce Commission, and stating that Chicago rates would apply from Whiting and other surburban points in what is known as the Chicago switching district. So far as appears from the evidence, the first of these application sheets filed by the Chicago & Eastern Illinois was effective July 6, 1903 (Petitioner's Exhibit 520), the first filed by the Alton effective August 13, 1901 (Petitioner's Exhibit 549), and the first filed by the Burlington effective May 24, 1901 (Petitioner's Exhibit 569). Mr. Felton, traffic manager of

the Standard Oil Company, and other witnesses, however, testified that for many years previous to the filing of such application sheets it was the custom of these and other railroads to apply Chicago rates from points in the Chicago switching district, including Whiting. (Defendants' testimony, p. 1746, vol. 14.)

It may be noted at this point also that when, at the request of the Interstate Commerce Commission, the three railroads in question began to put upon these application sheets lists of the tariffs from Chicago which were thereby made applicable from suburban points, they all listed this Tariff No. 24, containing the 18-cent rate, among others. (See Petitioner's Exhibits 520, 550, and 571.)

The defendants' witnesses, on cross-examination, admitted that, if they had before them Tariff 24, quoting the 18-cent rate from Chicago, together with the application sheets, and no other documents, they would say that the 18-cent rate was applicable on shipments of oil from Whiting to East St. Louis. (Hollands, vol. 16, p. 2864; Fort, Vol. 15, p. 2165; Shubert, vol. 15, p. 2200; Zimmerman, vol. 15, p. 2112; Pierpont, vol. 14, p. 2013; and others.) These were the only documents which were ever filed with the Interstate Commerce Commission. This shows conclusively that there was a filed and published tariff of 18 cents, known to the public, and the only reason these experts give for the 18-cent rate not applying is that there was an unpublished 6-cent rate not filed with the commission. The absurdity of this latter contention we shall fully demonstrate later.

The defendants have put in extensive testimony seeking to show that this rate of 18 cents per 100 pounds was an unreasonably high rate in comparison with the rates on other commodities between Chicago and East St. Louis. It may be conceded that the rate was a high rate, but that has nothing to do with the question of whether it was or was not the only legal rate. It is argued further that the 18-cent rate was a mere class rate, covering a multitude of commodities embraced in the fifth class in the Illinois classification, and that the class rate was not intended to apply on oil at all. Here again the answer is that oil was actually classified as fifth class and that in the absence of a legally published commodity rate the fifth-class rate was necessarily binding. A

class rate is just as real and binding a rate as a commodity rate, provided there be no lawful commodity rate to supersede it. It appears from the testimony that to many points in the West shipments of oil are actually made on the fifth-class rate of the Western Classification, which classification is substantially the same as the Illinois Classification. There was, therefore, nothing inherently improbable in the application of the fifth-class rate between Chicago or Whiting and East St. Louis. (Felton, p. 1931, vol. 14.)

A further evidence that the 18-cent rate was the proper rate on oil appears from the fact that the waybills of the Chicago & Alton Railroad during 1904 and 1905 showed that rate on shipments from Whiting to East St. Louis, although the rate actually collected by a secret device was only 6 cents.

Finally, the defendants argue that the railroads could not lawfully maintain a rate of 18 cents between Whiting or Chicago and East St. Louis, by reason of the long and short haul clause of the interstate commerce act. As a basis for this contention they cite the series of tariffs known as "Fulton's Tariffs," naming a rate of 11 cents from Chicago to Evansville on oil, and point to the fact that the Chicago & Alton and Chicago, Burlington & Quincy railroads, which had lines from Chicago to East St. Louis, and the Southern Railway, which had a line from East St. Louis to Evansville, were parties to this tariff. They hold, therefore, that there was a rate of 11 cents per 100 pounds from Whiting to Evansville by way of East St. Louis over the roads named, and that East St. Louis, being thus an intermediate point, could not take a higher rate than the rate to Evansville.

We claim that there is no definite evidence that the Chicago and Alton and Chicago, Burlington & Quincy roads, in conjunction with the Southern Railway, did actually make any rate over their lines of 11 cents from Chicago to Evansville. The tariff naming the 11-cent rate to which these roads were parties names also numerous other rates on classes and all sorts of commodities. It includes rates to Cairo, Ill., a point on shipments to which the Chicago & Alton and Chicago, Burlington & Quincy might very naturally participate. It names many rates much higher than 11 cents. The tariff naming the 11-cent rate states on its face that the rates named

therein are not necessarily made via all the lines parties to the tariff, but are subject to the established divisions of the various lines. (See Fulton's testimony, p. 367, vol. 20.) The defendants put in evidence division sheets showing that there were percentages or divisions by which traffic could be moved over the Chicago & Alton and Chicago, Burlington & Quincy in conjunction with the Southern Railway from Chicago to Evansville via East St. Louis. These division sheets merely provide that in case traffic is hauled the percentage accruing to the lines from Chicago to East St. Louis shall be 65 per cent, and to the Southern Railway from East St. Louis to Evansville 35 per cent. There is no evidence that restrictions were not in existence which would prevent the application of such a low rate as 11 cents per 100 pounds by this roundabout route. The Southern Railway, out of a rate of 11 cents, would have got only 3.85 cents for a haul of 243 miles from East St. Louis to Evansville, or 3.1 mills per ton per mile, an extraordinarily low revenue. While on traffic at relatively high rates, many of which were established in the tariff in question, the revenue to that line on a haul from Chicago to Evansville via East St. Louis might be sufficiently remunerative to induce it to put in percentage sheets, it does not follow that the Southern would haul traffic at low rates by that route. Moreover percentage sheets are purely private arrangements of the railroads, not filed with the Interstate Commerce Commission, and we claim that the publication of a tariff naming certain roads as parties, which expressly states that the rates do not apply via all routes parties thereto, can not be made binding upon any given road by a mere reference to divisions or percentages on the face of such tariff, since those divisions or percentages are not made part of the tariff and can not be made part of it without being filed.

The absurdity of arguing from the long and short haul clause of the interstate commerce act that a rate from Chicago to East St. Louis can not exceed the rate from Chicago to Evansville, will, we believe, appear directly to the court from a consideration of the relative positions of these towns on the map. Evansville is 287 miles south of Chicago by the shortest route; East St. Louis 281 miles, or practically the same distance, southwest. From East St. Louis to Evansville via the Southern Railway is 243 miles—the three points,

Chicago, East St. Louis, and Evansville, being thus at the points of a triangle having approximately equal sides. The application of the long and short haul clause of the interstate commerce act has been materially modified by the interpretations of the courts as to the meaning of the phrase "under substantially similar circumstances and conditions" in section 4 of the act. They have in various cases overruled decisions of the Interstate Commerce Commission which sought to limit rates under that clause. There are, in fact, many cases in which a lower rate is actually charged for a longer than for a shorter haul, even in the case of direct routes, while we do not believe that any instance will be found in the decisions where the rule has been applied to restrict a rate to an intermediate point in the case of routes conspicuously indirect, such as that from Chicago to Evansville by way of East St. Louis. As showing how little the railroads in practice have observed the long and short haul clause, we would call the attention of the court to the fact that on the Chicago & Alton Railroad itself the rate from Whiting to Springfield, Ill., a point intermediate on the Alton between Chicago and East St. Louis, was 9 cents per 100 pounds at the same time that the charge from Chicago or Whiting to East St. Louis was only 6 cents. (See Petition, vol. A, p. 96; Schindler, p. 1742, vol. 4.)

Even if this absurd argument were well founded, and if, had the matter come before the courts, it had been held that the rate from Chicago to East St. Louis could not exceed the rate from Chicago to Evansville, it would nevertheless have been true that prior to such decision of the court the 18-cent rate, being the only filed and published rate between Whiting and East St. Louis, was binding upon the railroads and the shippers and could not be abrogated by any action on their part except an amendment to the legally published tariffs or the issue of a lawful commodity tariff.

We now call the court's attention to the rates which were actually used by the Standard Oil Company on shipments from Whiting to East St. Louis over the Alton, Burlington, and Chicago & Eastern Illinois roads, and to the secrecy of the methods by which they kept these rates from the general public.

THE CHICAGO & ALTON'S SECRET RATE TO EAST ST. LOUIS.

The Chicago & Alton Railway operates a line from Chicago to East St. Louis. For many years it has made large shipments of oil originating at Whiting, which reached its lines over the Chicago Terminal Transfer Railway at Chappell, Ill., the junction of the Alton with that railway. This station Chappell, which is near Chicago, is also in certain tariffs designated as Belt Junction. Shipments from Whiting to East St. Louis over this route were clearly interstate shipments. The procedure, which is fully described in a stipulation (p. 458, vol. 20), was as follows: The shipping orders, made out by the Standard Oil Company and delivered to the Chicago Terminal Transfer Railway at Whiting, showed the route via the Chicago & Alton and the destination St. Louis or East St. Louis. (For copy of two of these shipping orders see pp. 458–9, vol. 20.) Duplicates of these shipping orders, signed by the railroad, were delivered to the Standard Oil Company as bills of lading, likewise showing the rate and destination. The agent of the Chicago & Alton at Chappell received no instructions or shipping orders directly from the Standard Oil Company, but prepared the waybills covering the movement to East St. Louis from the information appearing on the waybills of the Chicago Terminal Transfer Company, made out at Whiting (p. 460). All the Alton's waybills made out at Chappell showed the origin of the oil at Whiting, and also indicated that the Alton railway paid out of its rate the switching charges of the Chicago Terminal Transfer Railway from Whiting to Chappell. (Durand, pp. 1620–21, vol. 4; Petitioner's Exhibits 562, 563, and 564 are samples of these waybills.) A large part of the shipments, moreover, were made directly to St. Louis, Mo., the waybills showing this destination, an additional charge of 1½ cents per 100 pounds being made to cover the bridge or ferry toll from East St. Louis to St. Louis.

It should be noted further that, although the Chicago & Alton Railroad itself transported the oil only from Chappell, Ill., to East St. Louis, Ill., its rate of 6 cents per 100 pounds covered the entire transportation from Whiting to East St. Louis. Out of that rate it paid to the Chicago Terminal Transfer Railroad its switching charges for bringing the oil from Whiting to Chappell. On shipments to St. Louis

proper, moreover, the Alton railroad collected the entire charges to destination, namely, 7½ cents, from the Standard Oil Company and out of that amount paid the transfer charge of 1½ cents between East St. Louis and St. Louis.

There is no question, therefore, that all the shipments made over the Alton from Whiting, whether to East St. Louis or St. Louis, were through interstate shipments.

As already stated, the Chicago & Alton Railway was a party to the association tariff No. 24, naming the 18-cent rate as just described from Chicago to East St. Louis, and specifically made this rate from Chicago applicable also from Whiting by application sheets, filed with the Interstate Commerce Commission. The application sheets beginning with June 9, 1903, contained a list of tariffs from Chicago, and this list specifically includes tariff No. 24, which contained the 18-cent rate.

While the 18-cent rate was the only legally filed rate of the Alton on oil from Whiting to East St. Louis, that road had also another tariff which named a rate of 10 cents per 100 pounds, which, though not filed, was apparently not a secret tariff, but readily accessible to shippers. This rate of 10 cents was first issued effective November 15,1900, notwithstanding the fact that the actual rate then being paid by the Standard was 6 cents. The document named various rates on oil specifically—commodity, not class rates—from Summit, Ill., a station about a mile from Chappell, to other points in Illinois, among them a rate of 10 cents to East St. Louis, and in immediate connection with the rates was the further statement: "Includes $3 per car switching charge from Whiting, Ind." This 10-cent rate was continued by another tariff (Petitioner's Exhibit 557), effective August 15, 1903, in which the rate read from Belt Junction, Ill., which includes Chappell. (Durand, 1607–10, vol. 4.)

Neither of the tariffs containing this 10-cent rate was filed with the Interstate Commerce Commission, since they were considered state tariffs, although obviously, so far as the rates on oil were concerned, since they provided for their application from Whiting, they were interstate. Technically speaking, therefore, the 10-cent rate could not have been used legally from Whiting to East St. Louis. The rates were, however, apparently open rates in the sense that there was

no attempt to conceal them from the public. The tariffs were printed, they named rates on many other commodities between many points—therein entirely differing from the documents in which the 6-cent rate was named, as hereafter shown—and the tariff of 1903, at any rate, was distributed to all the local agents of the Chicago & Alton in Illinois. (See distribution list, Petitioner's Exhibit 551.)

Among other agents who had the tariff containing the 10-cent rate was the agent at Chappell (see same exhibit), and up to some time in 1904 all the waybills which he prepared covering shipments of oil from Whiting via Chappell to East St. Louis showed the 10-cent rate, although, as we shall show later, only 6 cents was actually collected.

The tariff containing this 10-cent rate was amended in February, 1904, by cutting out that rate, leaving as the only open rate of the Alton on oil from Whiting to East St. Louis 18 cents, and thereafter the rate of 18 cents was falsely entered in the waybills instead of 10 cents. After the investigation of the Bureau of Corporations in 1905, however, the tariff was again amended, restoring the 10-cent rate, and in December, 1905, was filed with the Interstate Commerce Commission and became a legal rate on oil. (Durand, 1609, 1613, 1614, vol. 4.)

For many years prior to June, 1905, the Chicago & Alton road was carrying oil at a 6-cent rate in the face of these 10-cent and 18-cent tariffs. During part of this time it had no document of any sort purporting even to be authority for such a rate. At other times the use of the rate was provided for in documents known as special billing orders, carrying a special series of numbers, known as "Special G. F. D." numbers, separate from the regular series of "G. F. D." numbers applied on ordinary tariffs. Copies of these special billing orders covering the years 1903, 1904, and part of 1905, were introduced in evidence by the Government (Petitioner's Exhibits 552 to 556). The attention of the court is called particularly to the form and appearance of these billing orders, and to the marked difference between them and the regular tariffs of this road, copies of some of which also appear among the petitioner's exhibits (Petitioner's Exhibits 549, 550, 557), as well as the differ-

ence between them and the Association Tariff 24 (Petitioner's Exhibit 558).

The following is a copy of one of these orders, covering the year 1903; the others are similar:

Form G. F. O. 57. 12-04.—5 M.

Special G. F. D. No. A 209.

THE CHICAGO & ALTON RAILWAY COMPANY.

TRAFFIC DEPARTMENT.

SPECIAL BILLING ORDER.

Taking effect: January 1, 1903.
From: Chicago, Ill.
To: Alton, Granite City, and East St. Louis, Ill.
Via: .....
On: Petroleum and its products, C. L. in tank cars.
Rate: 6 cents per 100 lbs.
Expires: December 31, 1903, unless sooner revoked.
Collection to be made through auditor's office.

FRED H. WANN,
General Freight Agent.

From January 1, 1903, to June 23, 1905, these billing orders show a rate of 6 cents from Chicago to East St. Louis. After June 23, 1905, and subsequent to the discovery of the 6-cent rate by the Bureau of Corporations (Durand, p. 1644, vol. 4), a new billing order was issued with a rate of 10 cents (Petitioner's Exhibit 556), but, as already stated, even this rate was not filed with the Interstate Commerce Commission until December, 1905, when it appeared in an amendment to another tariff.

As more fully shown later, these billing orders were not in the hands of the agents of the Alton road who actually handled the oil, but were applied by means of collection through the auditor's office, the purpose, as we shall show, being obviously secrecy. The court will notice that these billing orders do not mention Whiting at all. They are simply an authority for a rate of 6 cents from Chicago to East St. Louis and certain other points within the State

of Illinois. There is no pretense that they were ever filed with the Interstate Commerce Commission. There is no claim that they were in themselves any authority for the interstate transportation of oil from Whiting, Ind., to East St. Louis; but it is contended that the railroad at least believed that they could be legally used on such transportation by reason of the filing of application sheets stating that rates from Chicago would apply from Whiting.

We will now proceed to examine more in detail this latter contention. Mr. Felton and numerous representatives of railroad companies testified that, prior to 1906, it was the custom of railroads generally to apply unfiled state rates between points in a single State on shipments originating in or destined to other States, and that this practice was not considered by the railroads illegal. This general line of testimony will be considered more in detail later, in its bearing on all of the state rates used by the Standard on interstate shipments. It was further asserted by these witnesses that, under this custom, it would have been considered by the railroads legal to use a rate from Chappell or Chicago to East St. Louis on shipments from Whiting, and that, as a matter of fact, unfiled rates between Chicago and points in Illinois were frequently used on shipments of other commodities from Whiting, Hammond, East Chicago, and similar points in Indiana lying within what is known as the Chicago switching district. They testified that this was the practice even before so-called application sheets were issued by the railroads stating that Chicago rates would apply from such points, and that the practice continued after the railroads began to file these application sheets.

Various witnesses being shown the tariff naming the 18-cent rate, the Alton's tariff naming the 10-cent rate above described, the 6-cent billing orders reading from Chicago to East St. Louis, and the application sheets of the Chicago & Alton stating that Chicago rates would apply from Whiting, testified that under the practice of the railroads prior to 1906, they would, if asked for the legal rate from Whiting to East St. Louis, have quoted the 6-cent rate, notwithstanding the fact that the billing orders containing that rate were not filed with the Interstate Commerce Commission. (See,

among other witnesses, Pierpont, p. 1996–1998, vol. 14; Zimmerman, p. 2090–2092, vol. 15; Shubert, p. 2183, 2184, vol. 15; Eyman, p. 2127, 2128, vol. 15; Hurlbut, p. 2079–2081, vol. 14.)

These witnesses sought, moreover, to justify the application of the unfiled 6-cent rate not merely by the practice of railroads in using such state rates on interstate business during the period under consideration, but on the ground that the filing of the application sheets of the Chicago & Alton Railroad with the Interstate Commerce Commission was a notice of the existence of the 6-cent rate and its applicability from Whiting. They referred first to the application sheet I. C. C. No. 981, effective August 13, 1901. (Petitioner's Exhibit 549.) It was duly filed with the commission and it states, in substance, that the current rates from Chicago to stations on the Chicago & Alton Railroad in Illinois and Missouri will also apply from points in the Chicago switching district specified, including Whiting, Ind.

It is perfectly obvious, of course, that the filing of such an application sheet with the statement noted was in no way equivalent to filing the rate itself. The intent of the interstate commerce act is that rates used on interstate transportation shall be named in documents in the possession of the commission, so that the commission can determine from them what the rate is. The application sheet contained no rates whatever and it could make a legal interstate rate only in so far as the rates from Chicago, referred to in the application sheet, were also filed with the commission. The commission could not possibly have ascertained the existence of the 6-cent rate on oil over the Alton from any documents in its possession, and the mere statement that the rates from Chicago would apply also from Whiting was of no more value in enabling it to ascertain the actual rate than a statement that the rate would be found in some bottle floating on the open ocean.

Moreover, the Interstate Commerce Commission itself recognized that such a blanket application sheet naming no rates and referring to no tariffs for such rates was an insufficient document. Shortly after the issuance of the above-mentioned application sheet (I. C. C. 981) the auditor

of the commission, under date of August 15, 1901, wrote to the Alton as follows:

> Your I. C. C. No. 981, taking effect August 13, 1901, does not plainly show the rates to be charged as the law requires. I have to request, therefore, that the schedule be reissued as a supplement to the tariff showing the rates, or that reference be at least made to the I. C. C. numbers of such tariffs, so that the commission may have ready access to same. (Petitioner's Exhibit 931 A.)

The statement in this letter that reference should be made to the I. C. C. numbers of tariffs shows plainly that the commission recognized that only tariffs filed with the commission and bearing I. C. C. numbers could legally be made applicable on interstate traffic.

The Alton does not appear to have immediately conformed to this demand of the commission, but the next issue of its application sheet, I. C. C. 1203, taking effect June 9, 1903, did contain a list of tariffs from Chicago, made applicable from points in the switching district. (See Petitioner's Exhibit 550.) It is noteworthy that this list of tariffs names as the very first issue Tariff 24, containing the 18-cent rate, and it does not name any special billing order containing the 6-cent rate.

It was contended by practically all of the witnesses above mentioned that this list of tariffs in the application sheet of 1903 was not intended to be a complete list and that it in no way precluded the application from Whiting of the rate of 6 cents, named in a special billing order not contained in the list. It is argued that the meaning and intent of the tariff is to make all rates from Chicago applicable also from Whiting and that the list of tariffs was appended, not for the sake of conforming to the demand of the commission in its letter of August 15, 1901, but merely for convenience and without any intent to be a complete and exclusive list. It is obvious, however, that if this was the intent, the application sheet was most decidedly misleading and that any natural interpretation of it would be that the list of tariffs included all the tariffs which were by the application sheet extended to points of origin other than Chicago proper. It is obvious, also, that the new application sheet left the commission quite as much in the dark as to the existence

of the 6-cent rate on oil as the previous application sheet containing no list of tariffs, and that it could not in any sense be considered as making that rate a legal rate.

The Government, however, in this case, is not concerned merely with showing that the use of the 6-cent rate over the Chicago & Alton was a technical violation of law. It may readily be, as contended by numerous witnesses for the defendants, that state rates not filed with the commission were in some cases, during the period in question, applied in good faith on interstate shipments without any intent to conceal the discrimination. We believe, however, that the slightest consideration of the evidence as to the methods of handling this particular business over the Alton road will convince the court that this rate was not merely a technical violation of the interstate commerce act, but that it was deliberately kept secret and was conspicuously a discrimination in favor of the Standard Oil Company. We invite the careful attention of the court to the evidence regarding such secrecy.

In the first place, as already stated, Mr. Hollands, the chief tariff clerk of the Alton road, testified that during the year 1902, although the rate of 6 cents per hundred pounds was being applied on all shipments of the Standard from Whiting to East St. Louis, there was no tariff, special billing order, or other document in his files authorizing such a rate. He states that he did find old special billing orders issued in 1895, or about that time, naming such a rate, but that these billing orders did not cover the year 1902, when he first entered the employ of the Alton road. (Defendants' testimony, pp. 2821, 2826, 2828, vol. 16.)

In the second place, we call the attention of the court to the facts regarding the date of the issue of the special billing order of 1903. (Petitioner's Exhibit 552.) It will be seen that this billing order states on its face, "Taking effect January 1, 1903." The distribution sheet, which is the record of the railroad regarding the sending out of this billing order (Petitioner's Exhibit No. 559), shows that it was not distributed until April 4, 1903. This was subsequent to the passage of the Elkins Act (February 19, 1903) imposing penalties upon railroads and shippers for violations of the interstate commerce act, and the date certainly suggests the

idea that the billing order was issued with the thought of giving some cloak of legality to the application of the 6-cent rate, however imperfect that cloak, as we have already seen, was, as a matter of fact. Mr. Hollands in his testimony claimed that the date shown on the distribution sheet was no proof as to the actual date when the billing order was drawn up and approved. He said that he believed that it was so approved some time previously, but was unable to state whether it was in December, 1902, or January, February, March, or April, 1903. He stated that he had for some time carried in his pocket the original draft with the approval of Mr. Wann, marked O. K. with the initials of Mr. Wann, the freight traffic manager, and the date, but that he had lost this paper and could not state what had become of it, or remember the date. (Defendant's Testimony, pp. 2821–2826, 2830–2832, 2867, vol. 16.)

As this matter of the date of this billing order was a subject of discussion in the evidence in the criminal case at Chicago in which Mr. Hollands was a very prominent witness, his inability to remember the date of this memorandum of Mr. Wann, and his loss of the paper itself, are very suggestive.

In the third place we have already called attention to the fact that the 6-cent rate was not covered by a document designated as a tariff and bearing a number in the regular series of tariff numbers, but by documents designated as special billing orders and bearing a special series of numbers. Any person examining a consecutive file of regular tariffs, following their numbers one after another, would have no way of discovering the existence of these billing orders.

Mr. Hollands, the chief tariff clerk of the Alton Railroad Company, testified that there was no peculiarity about the use of special billing orders as distinguished from tariffs; that very large numbers of such billing orders were issued on all sorts of commodities covering what was considered state business. He states that the numbers attached to the particular billing orders in question were serial numbers indicating that large numbers of other billing orders in the same series had previously been issued; that there were 300 or 400 each year (including orders covering various points in Illinois and Missouri and not those from Chicago alone), and that the billing orders in general were considered in no sense secret tariffs. He asserts further that the reason they

were given special numbers and called special billing orders was because they were issued for particular and often temporary reasons, and hence were made to expire at the end of each year in order that at that time a new determination should be made as to whether the rates should be continued, and that for this reason it was undesirable to have them in the same series of numbers with regular tariffs which did not so expire. (Hollands, pp. 2806, 2810–2818, vol. 16.)

He admitted that after about the middle of 1903 these special billing orders were not kept in the same files as the regular tariffs, but were kept in separate books, but he claimed that this was merely for convenience and that these books were open to all employees in his office and were not in any way considered secret.

It was, of course, neither incumbent upon nor possible for the Government to investigate all of the special billing orders of the Alton road to ascertain whether they were discriminatory and to ascertain whether they were actually considered secret rates or otherwise. The practice of keeping such separate authorities for rates is obviously objectionable and renders the concealment of rates much easier than would be the case if the rates were carried in the regular tariff series. In the case of these particular 6-cent billing orders on oil, however, there are other evidences than the mere form of the billing orders which go to prove conclusively their secrecy.

In the next place, and most important of all—in opposition to the universal custom of railroads in regard to open rates—the 6-cent billing orders were in no case sent to the local agents of the Alton Railroad, or to the commercial or contracting agents whose business it is to solicit freight and quote rates.

This appears clearly from the testimony of Mr. Hollands (Defendant's Testimony, pp. 2812–2819, vol. 16) as well as from the distribution sheets of the several 6-cent billing orders. (Petitioner's Exhibits 559 to 561.) They were sent only to officers in the general office of the railroad company, and to Mr. Bogardus and Mr. Felton, traffic officers of the Standard Oil Company. The Interstate Commerce Act requires legal tariffs not merely to be filed with the Commission, but to be kept in the files of the local agents of the railroad at the points of origin. It is perfectly obvious that

without having such tariffs in their possession the local agents were not in a position to quote the 6-cent rate to any shipper. As we shall see, there is no reason to believe that the local agents even knew of the existence of the rate, to say nothing of having a tariff authority for it in their possession.

Mr. Hollands attempted to explain the failure to send these billing orders to the local agents on the ground that they were not interested in them, since the collection of charges was not in their hands, but was made through the auditor's office, as provided by the billing orders themselves. This is an explanation which does not explain, but on the contrary the very practice of collecting through the auditor's office was obviously a device to insure the secrecy of the rate. (Defendant's testimony, p. 2816, vol. 16.)

This is at once evident from a consideration of the actual practice of the Alton in handling the shipments on this 6-cent rate. It appears that the agent at Chappell, who received the cars of oil from Whiting and forwarded them to East St. Louis or St. Louis, not having in his possession the 6-cent billing orders, entered upon the waybills the regular rates appearing in the tariffs which he did possess, namely, the rate of 10 cents per hundred pounds during a certain period, and the rate of 18 cents thereafter. (Durand, pp. 1620, 1621, vol. 4. For samples of these waybills, see Petitioner's Exhibits 562, 563, 564.) The rate of 10 cents, as we have already explained, was the rate covered by a printed and conspicuous tariff, not, however, filed with the Interstate Commerce Commission, and was in force up to February, 1904. After the cancellation of this rate the rate of 18 cents, being the class rate appearing in the Chicago & St. Louis Traffic Association Tariff No. 24, was inserted in the waybills. The waybills were marked prepaid, which means that the local agent at Chappell charged himself as having collected the amount of freight charges at these rates of 10 and 18 cents, respectively. He did not, however, actually collect any charges whatever. In order to balance his account he made a bill against the auditor's office, showing the amount of these charges as advances, an entry which would indicate that he had paid out that amount of money to other railroads. The false entry balanced his account and the auditor's office then became responsible for the collection of the charges. (Howard, p. 465, vol. 20.)

Mr. Howard, the chief freight accountant in the auditor's office, explained how the account was handled by him in that office. (See vol. 20, pp. 464, 465.) He kept the account in a book marked on the back "Unpaid coupons," a title which of course gave no clue to its actual contents. In this book he entered as a charge the amount of the freight as reported by the agent at Chappell, namely, at the rate of 10 or 18 cents per hundred pounds. He then made out a bill against the Standard Oil Company at the rate of 6 cents per hundred pounds and entered this amount as a credit on his book, showing the difference between them as an overcharge in order to balance the account. This account, in other words, was in substantially the same form it would have taken if the secret rate had been made by means of an actual rebate and the difference between the regular rate and the secret rate refunded to the Standard Oil Company and entered in the book. The following is a copy of a page of this book (from vol. 20, p. 465), the three items about the middle of the page representing the difference between the regular charges, which appear at the left, and the amount paid by the Standard appearing at the right:

Chappell, Standard Oil Audit Account, June, 1904.

June 15	Audit	134	1,135.34			2,207.82
		135	1,849.79			
		136	1,216.33			
		138	1,810.66			
		139	34.65			
		140	302.86			
			6,349.63		4,141.81	2,207.82
June 30	Audit	232	251.25			2,092.83
		233	750.39			
		234	76.55			
		235	2,764.43			
		236	1,968.83			
	6846		5,811.45		3,718.62	2,092.83
		137	344.33			344.33
		237	1,203.32			1,203.32
			1,547.65			1,547.65
			13,708.73		7,860.43	5,848.30

These methods of handling the business show beyond all question that the Chicago & Alton Railroad desired to conceal the 6-cent rate. No other explanation can account for the false entries made on the waybills, the false entries in the accounts of the local agent at Chappell, and the method of accounting in the auditor's office.

Finally, as evidence of the secrecy of these rates there is the admission of officers and employees of the Alton Railroad, made previous to the trial of this case and of the criminal case against the Standard Oil Company at Chicago, that those rates were actually intended to be secret. The testimony of Mr. Durand regarding the statements made to him by these officers is competent proof of the declarations of coconspirators, the charge of conspiracy between the Standard Oil Company and the railroads being one of the allegations in this case. We believe, moreover, that these declarations, made prior to the trials, are far more significant than the testimony of Mr. Hollands in the present case to the effect that the 6-cent rate was not considered secret. Mr. Durand testified that Mr. Blabon, freight traffic manager of the Alton, and Mr. King, its general freight agent, admitted to him in 1905 that the 6-cent rate was not intended to come to general public knowledge, and that it was the purpose of the Alton to keep it secret, particularly from other railroads, and that they had not considered it necessary to file the tariff containing the rate on the theory that it was state business. (Pp. 1615–1616, vol. 4.) He testified further that a clerk in charge of the tariff files of the Alton, whose name he did not know, showed him these special billing orders containing the 6-cent rate; told him that they were not filed with the Interstate Commerce Commission; and said that they were not public rates, that they were not intended to be shown to persons who might inquire regarding rates, and that if a person had asked him for a rate from Chicago to East St. Louis on oil he would have quoted the rate of 10 or 18 cents, according to the time at which the question was put. (Durand, pp. 1616, 1617, vol. 4.) It is noteworthy that the defendants did not call to the witness stand any of the officers or employees who made these statements to Mr. Durand.

It will doubtless be contended by the defense that this secrecy was not at the instance of the Standard Oil Company,

and was of no concern to it; that it was merely a device of the railroad to conceal this rate from competing railroads. There is no evidence that the Standard Oil Company ever saw the waybills of the Alton containing the 10 or 18 cent rates; under ordinary railroad practice waybills do not come under the observation of either the shipper or consignee. The shipping orders issued by the Standard Oil Company to cover these shipments and the bills of lading or receipts for them contained no rates whatever.

There is, however, direct evidence to show that the Standard Oil Company must have known of the false billing of these shipments. It was the practice of the Alton to send to the Standard, in connection with its bill for freight charges at the rate of 6 cents per hundred pounds, a list of the cars shipped, with the weights, commonly designated as a statement of billing. It appears from the testimony of Mr. Howard that these statements of billing were originally prepared by the local agent at Chappell and, after being copied by Mr. Howard in the auditor's office, were forwarded to the Standard Oil Company. These statements of billing did not ordinarily show any rate or freight charges opposite individual cars. In the auditor's office the total weight was figured up and the charges computed at the bottom of the several sheets, or on recapitulation sheets, at the rate of 6 cents per hundred pounds. Several statements of billing sent to the Standard, however, did show opposite the original entries of car numbers and weights the rate of either 10 or 18 cents per hundred pounds, and in some instances the freight charges computed at that rate. The exact number of cases in which these statements of billing contained such information, and the form of them, is accurately set forth in the evidence. (Durand, pp. 2429 to 2431, vol. 5.) Copies of some of these statements of billing will be found in Petitioner's Exhibits 565, 566, and 567.

We call the attention of the court particularly to Petitioner's Exhibit 565, the collection bill for the first half of February, 1903, with the attached statement of billing. The following is a copy of the first page of this statement of billing:

[Form 206A. 25M. 10-04.]

THE CHICAGO & ALTON RAILWAY COMPANY.

Statement of billing. From Chappell to E. St. Louis.

Date.	Way-bill No.	Car No.	Consignee.	Destination.	Articles.	Weight.	Rate.	Pre. pd.	Adv. chgs.
(Illegible.)	192	5448	Ober Nester Glass Co...	E. St. Louis.....	Oil.....	28,960	10	28.96	3.50
	203	5185	.....do.....	.....do.....	...do...	28,896	10	28.89	3.50
						57,856		57.85	7.00
			Recapitulation, Feb'y, 1903, Standard Oil Co.						
			Ill. Glass Co.....	Alton.....	.....	234,925	6	.....	.....
			Am. Steel Fdy Co.....	Granite City.....	.....	231,519	6	.....	.....
			Waters P. Oil Co.....	E. St. Louis.....	.....	39,008	6	.....	.....
			Republic O. Co.....	St. Louis.....	.....	48,000	6	Plus 4.50 per car.	.....
			Ober Nester G. Co.....	E. St. Louis.....	.....	57,856	6	.....	.....
			Plus 4.50 per car Swg. Republic O., 2 cars.....			611,308	6	366.78	.....
								9.00	.....
								375.78	.....

260

On the very first page of this statement of billing the rate of 10 cents appears at the top, with the freight charges computed at that rate on two cars on this page, while at the bottom the total weight of all the cars from the several pages is recapitulated and the charges computed at 6 cents. On every one of the 6 pages of this statement of billing the rate of freight of 9 cents (the published rate) to Alton, 10 cents to East St. Louis, or 11½ cents to St. Louis is shown opposite each and every car, with the freight charges computed at these rates and totaled, while the actual charges on all the shipments were 6 cents plus 1½ cents for cars going to St. Louis proper. No person receiving such a statement as this could fail to understand that the 6-cent rate was not the regular and proper rate.

Even if the Standard Oil Company had not originally connived in or actually brought about the secrecy of the 6-cent rate, the receipt of these statements of billing, showing a rate higher than 6 cents, was a forceful notice to any person familiar with railroad practices and conditions that the Alton was billing the oil at these higher rates. The receipt of these statements of billing at least put the Standard immediately on inquiry, and the failure then to ascertain that the 6-cent rate was a secret rate not filed with the commission and in conflict with the regular rates of the railroad can be attributed only to a deliberate connivance in the secrecy.

Aside from this direct notice to the Standard Oil Company of the existence of the 10-cent and 18-cent rates, there are other reasons why the Standard Oil Company must have known that the 6-cent rate was not filed by the Alton with the Interstate Commerce Commission. Tariffs filed with the commission almost invariably are numbered in a series with the initials "I. C. C." prefixed—what are known as "I. C. C. numbers." They are almost invariably designated as tariffs, and never by the term "billing orders." As we have seen, the documents authorizing the 6-cent rate over the Alton did not bear I. C. C. numbers, nor even the regular series of numbers of the railroad itself, but were numbered with numbers designated as "special" G. F. D. numbers. No experienced traffic officer could be misled into assuming without investigation that these billing orders had been filed with the commission.

Moreover, the notation on the billing orders that collection was to be made through the auditor's office was a peculiar provision, never found on ordinary tariffs, and itself a plain indication that the billing orders were not filed. Indeed, this method of collection through the auditor's office, which was a decidedly unusual method, should alone have put the Standard on inquiry as to the secrecy of the rate.

Finally, we believe that it does not stand to reason that the secret methods followed by the Alton in the handling of this rate on oil to East St. Louis were intended chiefly or at all to conceal the rate from other railroads. The Alton must have known that at least two other railroads were making the same rate, because of the very large shipments moving over those railroads. The three roads which made the 6-cent rate, namely, the Chicago & Alton, Chicago, Burlington & Quincy, and the Chicago & Eastern Illinois (6¼ cents), were, with the exception of the Illinois Central and Wabash, the principal and most direct lines between Chicago and East St. Louis, and it is difficult to see why three railroads naming the same rate, or substantially the same rate, should have any particular desire to conceal the rate from the two or three others who might have sought a share in the business. There was practically no motive for the Alton to conceal this rate from other railroads between Chicago and East St. Louis. The only possible explanation of the secrecy was that it was intended to conceal the rate from competitors of the Standard Oil Company, whether at Chicago or vicinity, or at eastern points, or from the railroads extending from such eastern points to East St. Louis. The Standard Oil Company was clearly the chief beneficiary of the secrecy, and it is impossible to believe that the railroad company would take upon itself the risk of being detected in a violation of law, the advantage of which inured chiefly, if not wholly, to the Standard Oil Company, without the Standard even knowing the facts. We have already seen that the Standard Oil Company connived in and apparently initiated the secret methods in connection with the rates from Whiting to Evansville, and from Whiting to Grand Junction, and the evidence as to those cases throws a side light upon the facts with regard to these East St. Louis rates.

THE CHICAGO, BURLINGTON & QUINCY'S ILLEGAL EAST ST. LOUIS RATE.

The only legally filed and published rate on oil from Whiting to East St. Louis over the Chicago, Burlington & Quincy Railroad was 18 cents, while the actual rate charged by that company on shipments of the Standard Oil Company for many years prior to June, 1905, was 6 cents. These shipments, like those of the Alton, were clearly interstate shipments, the course of business with respect to the shipping orders and the preparation of the waybills being similar to that on the Alton, as described on page 246, *ante*. (See stipulation, p. 460, vol. 20.)

The Chicago, Burlington & Quincy Railroad, like the Chicago & Alton, was a party to the Chicago and St. Louis Traffic Association Tariff No. 24 (Petitioner's Exhibit 558) naming the class rate of 18 cents between Chicago and East St. Louis, which, in the absence of a legal commodity rate, was the legal rate on oil.

The rate actually charged by this railroad was 6 cents per 100 pounds. This rate was authorized only by a series of special billing orders and special tariffs not filed with the Interstate Commerce Commission. From 1900 to 1903, inclusive (Durand, pp. 1628, 1629, vol. 4), the rate was covered by documents in the form of Petitioner's Exhibit 572, headed with the words: "The following billing rates, taking effect — will expire — unless earlier withdrawn." Taking effect January 1, 1904, a similar document was issued, save that the words "billing rates" were struck through and at the top was inserted the words "special tariff." This so-called special tariff of 1904 was designated as G. F. O. (General Freight Office) No. 1059. (Petitioner's Exhibit 573.) During 1905 the rate was covered in a document in somewhat different form, designated as a tariff. (Petitioner's Exhibit 574.)

The Chicago, Burlington & Quincy did not, like the Chicago & Alton, use false rates upon its waybills covering the movement of this oil, nor, like the Chicago & Eastern Illinois, use blind bills showing no rates. The waybills of the Burlington, of which Petitioner's Exhibit 575 is a sample, were in the usual form of waybills, showing the rate per 100 pounds, 6 cents, and the freight charges computed at that

rate. It by no means follows, however, that the Burlington did not seek to keep this rate secret. As testified to by various witnesses, waybills do not ordinarily come under the observation of shippers or consignees, or of the public generally; they are railroad documents, intended for the use of the railroad employees only.

There is no pretense that the documents showing this rate of 6 cents per 100 pounds were ever filed by the Chicago, Burlington & Quincy Railroad until long after the 6-cent rate was canceled. The witnesses who testified that, under the practice of railroads in using state rates on interstate business and in applying Chicago rates from points in the Chicago switching district, they would, during the time that the shipments were moving, have named the 6-cent rate as the legal rate from Whiting to East St. Louis on the Alton, gave precisely the same testimony and the same reasons therefor with respect to the Chicago, Burlington & Quincy. The same criticism which was made regarding that testimony, in discussing the Alton situation, applies to the Burlington situation.

As in the case of the Alton, the witnesses contended that the so-called application sheet of the Chicago, Burlington & Quincy I. C. C. No. 4721, effective December 28, 1903, filed with the Interstate Commerce Commission (Petitioner's Exhibit 570), notified the commission that all rates applicable from Chicago were applicable also from Whiting, and that they would, at the time of the shipments, have considered this as making the 6-cent rate a legal rate from Whiting, even though not itself filed with the commission. As in the case of the Alton, however, the Interstate Commerce Commission was dissatisfied with the form of the application sheet issued by the Burlington, and wrote, under date of December 30, 1903, requesting that it be reissued or amen "to make proper reference to schedules on file with the commission showing rates from Chicago to points named therein." (Petitioner's Exhibit 930 C.) Subsequent to this letter, and on May 1, 1904, the Burlington did make an amendment to its application sheet (Petitioner's Exhibit 571), which stated "Rates authorized in tariff hereby amended will apply in connection with following-numbered tariffs or subsequent issues. I. C. C. Nos." A list of tariffs followed this nota-

tion, among which appears the Chicago and St. Louis Traffic Association Tariff No. 24 (I. C. C. No. 3). This list, however, did not include any billing order or so-called tariff naming the 6-cent rate on oil. The language of this amendment is such as to plainly convey the idea that the list appended is a complete list, and yet it makes no reference to a tariff containing the rate which was actually applied on oil. (See also testimony of Pierpont, pp. 2022, vol. 14.)

Mr. Felton, testifying for the defendants, pointed out that this list of tariffs in the amendment to the application sheet did give the number of a tariff, which in turn gave the number of the special tariff G. F. O. 1059, which made the 6-cent rate on oil during 1904. In view of the very indirect character of this reference and of the fact that G. F. O. 1059 was not filed with the commission at the time, we do not believe that the defendants will contend that the commission had any notice whatever of the existence of the 6-cent rate. (See Felton's testimony, p. 1755, vol. 14.)

The defendants also called attention (Felton, p. 1754, vol. 14) to a tariff of the Burlington road, G. F. O. 1247, which, while issued in 1896, was first filed with the Interstate Commerce Commission April 4, 1904. This was a conspicuous commodity tariff on oil from Chicago to numerous points, but it did not name rates to East St. Louis, Peoria, and certain other points, but showed opposite the names of these points the words "See special tariff." Again, it can hardly be contended that a mere statement by the railroad that there was a special tariff, without indicating what its number was or where it would be found, was in any sense a notice of the existence of the particular 6-cent special tariff which was actually being applied, or that it even had reference to it. The reference to a special tariff in the case of East St. Louis might just as well be to the Chicago and St. Louis Traffic Association Tariff containing the 18-cent rate, which was a special tariff between Chicago and East St. Louis, as distinguished from the Tariff G. F. O. 1247, which covered a very large number of points of destination.

In judging the significance of the method of handling the business on the Burlington road, it is proper for the court to consider also the methods employed on the Alton and the Chicago & Eastern Illinois roads. The evident pains taken

by the two latter roads to conceal the rate would be absurd if the Burlington's rate of 6 cents were considered an open rate. As already stated, the mere fact that the Burlington did not use any peculiar device in its waybilling to conceal the rate is no evidence whatever that it was not secret; it merely means that the Burlington took less complete precaution to maintain the secrecy than the other roads.

CHICAGO & EASTERN ILLINOIS RAILROAD'S ILLEGAL EAST ST. LOUIS RATE.

The Chicago & Eastern Illinois Railroad, like the Alton and Burlington railroads, was a party to the Chicago and St. Louis Traffic Association Tariff No. 24, naming the rate of 18 cents per 100 pounds between Chicago and East St. Louis on 5th-class commodities, which, in the absence of a legal commodity rate, would be the only legal rate on oil from Whiting to East St. Louis. The rate actually charged was 6¼ cents. As in the case of the shipments over the Alton and Burlington, there could be no question that the shipments over the Eastern Illinois were true interstate shipments. The course of business with respect to the shipping orders prepared by the Standard Oil Company and with respect to the waybilling of the oil was similar to that already described in detail as regards shipments over the Alton. (See stipulation, p. 460, vol. 20.)

The situation with respect to the rate from Whiting to East St. Louis over the Chicago & Eastern Illinois is, however, slightly different from that with respect to the Alton and Burlington roads, for the reason that the Eastern Illinois did file with the Interstate Commerce Commission a tariff naming a rate of 6¼ cents from Dolton, Ill., to East St. Louis, which tariff provided, in a note, for the absorption of switching from Whiting. The defendants have attempted to maintain that the filing of this tariff made the rate on the Eastern Illinois an open and legal rate, and they argue further that if the rate of 6¼ cents was open and legal the Standard was entirely justified in accepting the 6-cent rate over the Alton and Burlington, even though not filed with the commission (the 6¼-cent rate being equivalent to the 6-cent rate because of a difference in terminal expenses). The Government believes, however, that the rate of the Eastern

Illinois road was quite as effectively secret as that of the Chicago & Alton, and, because it was secret, was also illegal.

The provisions of the interstate commerce act are not fully complied with merely by filing a tariff with the commission. The purpose of the act is plainly to secure publicity of rates, so that any shipper can ascertain the rate promptly and without difficulty. To this end, the law requires that rates shall not merely be filed, but shall be posted and kept in the possession of the agents of the railroad at the point of origin of shipments, accessible to all and available alike to all. Any device which prevents the knowledge of the rate from coming to the shipper through the agents of the railroad—which is the usual source of his information—is an illegal device, and any rate so concealed is an illegal rate.

In the first place we desire to call the attention of the court particularly to the full facts with regard to the filing of the rate of the Chicago & Eastern Illinois Railroad. The two tariffs which were filed were, respectively, No. 7441, effective October 29, 1894, and No. 8073, effective October 14, 1895, and constitute Petitioner's Exhibits 576 and 577. The court will notice that the first of these tariffs is in the following form:

Oil, carloads.
Minimum weight 40,000 lbs.
from
Dolton, Ill.,
to
East St. Louis, Ill.
6½ cents per 100 lbs.
Issued October 24th, 1894. Effective October 29th, 1894.
Out of the above rate we will absorb not to exceed $3.00 per car C. & C. T. switching on shipments from Whiting, Ind.

The tariff of 1895 was precisely similar, except that the rate was 6¼ cents instead of 6½ cents, and the dates different.

It will be observed that the point of origin, Whiting, does not appear directly, but only by means of the statement appearing on the lower part of the tariff with regard to the absorption of switching. As already stated, in calling attention to the fact that the rate of 13 cents to Grand Junction, Tenn., was also made to read from Dolton, this is a very unusual form of naming rates from points in the Chicago switching district, the usual practice being to show Chicago

as the point of origin and to provide in general terms for the application of the Chicago rate from all points in the switching district, such as Dolton and Whiting. Dolton is an insignificant point, and it would scarcely occur to anyone seeking to ascertain the rate from Whiting to East St. Louis to look for a tariff reading from Dolton. Clearly these two tariffs of 1894 and 1895 did not properly comply with the interstate commerce act, which requires the schedules or tariffs to "plainly state the places between which property and passengers will be carried" and the rates at which they will be carried.

In the second place, as showing the spirit of the Chicago & Eastern Illinois with respect to this rate, we call the attention of the court to the fact that in 1903 the tariff No. 8073 of 1895 was specifically canceled by an amendment to another tariff, which amendment named the same rate, but with slightly different conditions, and that this amendment was not filed with the Interstate Commerce Commission, although the tariff to which it was an amendment had been duly filed.

This amendment (Petitioner's Exhibit 579) was designated as amendment No. 1 to the Chicago & Eastern Illinois Tariff G. F. D. No. 7986. This tariff No. 7986 (Petitioner's Exhibit 578) had been issued in 1895 and filed with the Interstate Commerce Commission. It named class rates from Chicago and other points in the Chicago switching district to points on the Cleveland, Cincinnati, Chicago & St. Louis Railway in Illinois, including East St. Louis. It was thus a well-known tariff, covering many points. Various changes in the tariff had been made from time to time after 1895 by means of documents designated as supplements, numbered serially as supplement 1, supplement 2, etc. (Durand, p. 1635, vol. 4.) These supplements had been duly filed with the Interstate Commerce Commission. It was obviously in order to prevent a break in this series of supplement numbers, which would result from the failure to file a supplement containing the 6½-cent rate to East St. Louis and which would have attracted attention, that the document containing that rate was designated as amendment No. 1, instead of as a supplement. This amendment No. 1 was issued July 7, 1903, and made effective the following day. It specifically canceled the tariff No. 8073, namely, the tariff of 1895, which had been

filed with the commission and which contained the rate of 6¼ cents from Dolton to East St. Louis. It provided, however, that the rate from Chicago and Dolton Junction to East St. Louis should be 6¼ cents per 100 pounds, and by means of application sheets would, had it been filed with the commission, have been also the rate from Whiting.

It is obvious that had the Chicago & Eastern Illinois Railroad in good faith treated this 6¼-cent rate as an open, published rate, it would have filed this amendment with the Interstate Commerce Commission at the time it was issued, in the same way as other amendments or supplements to the Tariff No. 7986 were filed.

We call the attention of the court further to the fact that, although the Tariff No. 8073, of 1895, remained on file with the commission, and although the commission had no notice of its cancellation by the amendment of 1903, because that amendment was not filed at the time, nevertheless the tariff in the files of the commission was no longer a tariff in effect, and could not be any legal authority for the application of the 6¼-cent rate. The defendants contend that because the cancellation of the tariff was not filed the original tariff, which had been filed, served the same purpose of giving notice to the public of the 6¼-cent rate as before, but we believe, on the contrary, that the failure to file the new issue containing the same rate was itself evidence that the Chicago & Eastern Illinois did not intend the public to know of the existence of this rate if it could prevent it. (See Durand's testimony, pp. 1634–1637, vol. 4.)

In the third place, as evidence of the secrecy of the 6¼-cent rate, there is the admission of the chief traffic officer of the railroad company itself. Mr. A. S. Dodge, third vice-president of the railroad, in charge of its traffic, stated to Mr. Durand, as special agent of the Bureau of Corporations, in the latter part of 1905, that the amendment, which was then the authority of the railroad company for its 6¼-cent rate, had not been filed with the Interstate Commerce Commission, although it applied on interstate commerce, because the rate was considered by the railroad as "semiprivate" in character, but claimed that the object in not filing it with the commission was to conceal the rate from other railroads rather than from shippers other than the Standard Oil Com-

pany. (Durand, p. 1644, vol. 4.) This latter claim is as improbable in the case of the Chicago & Eastern Illinois as in the case of the Chicago & Alton. Practically the Standard Oil Company alone could benefit by the secrecy.

Mr. Dodge indeed said further that rates of this character (which he calls semiprivate rates) would generally be given to any shipper, but that this was not always true, particularly if a shipper was not previously acquainted with the fact that the rate existed and was being given to others.

It would appear that Mr. Dodge did not even know that a tariff containing this 6¼-cent rate had been filed with the commission in 1895, since otherwise it is difficult to believe that he would not have so stated to Mr. Durand and contended that such filing made the rate a legal and open rate.

As in the case of other similar admissions and statements of officers and employees of railroads, the Government holds that this statement of Mr. Dodge to Mr. Durand is competent testimony, as an admission of a coconspirator.

Finally, most conclusive evidence of the policy of the Eastern Illinois in seeking to keep this rate secret appears from the method of handling the shipments. The evidence indicates that from the very day that the 6¼-cent rate was filed with the commission in 1894 down to the final withdrawal of the 6¼-cent rate after the investigation of the Bureau of Corporations in November, 1905, the oil shipped under it was "blind billed." The evidence of Mr. Durand demonstrates the existence of this practice during the period from January, 1903, to November, 1905, and, as we shall show, it was evidently in existence throughout the period in which the 6¼ and 6½ cent rates were applied. As in the case of the shipments from Whiting to Grand Junction, the local agent of the Chicago & Eastern Illinois at Dolton or at Chicago made out the waybills without showing any rate or any freight charges. He collected no charges himself from the Standard Oil Company, but sent a list of the shipments to the general auditor of the railroad, who, by means of what are called collection vouchers rendered semimonthly to the Standard Oil Company, collected at the rate of 6¼ cents, or in the case of shipments to St. Louis, 7¾ cents, including a

bridge or ferry toll of 1½ cents. (Durand, pp. 1646–1653, vol. 4.)

The Government introduced in evidence a sample copy of one of these blind waybills showing no rate (Petitioner's Exhibit 582½; Durand, 1626, vol. 4); also copies of two of the collection vouchers rendered to the Standard Oil Company, with the accompanying lists of cars, or so-called statements of billing. (Petitioner's Exhibits 583 and 584; Durand, 1649–1653, vol. 4.)

The practice of collecting through the auditor's office was shown by the examination of the Bureau of Corporations, to which Mr. Durand testified, to have been pursued in connection with these shipments over the Eastern Illinois from Whiting to East St. Louis as far back as 1899. (Durand, 1648, vol. 4.) This is itself substantial evidence that the oil was also blind billed as far back as that date. The Government subpœnaed Mr. J. S. Ford, auditor of the Chicago & Eastern Illinois, the official in whose charge original waybills or copies of waybills and other documents relating to the shipments properly belong, to produce such papers covering the shipment of oil from Whiting to East St. Louis as far back as 1894, when the rate was put into effect. He testified that none of these papers prior to 1900 had been preserved. In the absence of such direct documentary evidence, therefore, we consider the correspondence hereinafter mentioned as competent evidence, showing the practice of blind billing during these earlier years. (Ford, p. 463, vol. 20.)

Mr. Reilly, general freight agent of the Eastern Illinois, produced from the records of that railway several letters pertaining to the shipment of certain cars of oil from Whiting to East St. Louis during 1897. (Petitioner's Exhibits 1032–1035, inclusive, vol. 21.) These shipments, as the correspondence shows, were to move from Whiting over the Elgin, Joilet & Eastern Railroad, instead of over the Chicago Terminal Transfer Railroad, the usual switching line, and were to be delivered to the Chicago & Eastern Illinois Railroad at Chicago Heights instead of Dolton. The general freight agent wrote to the auditor, suggesting that these shipments be handled and billed in the same manner as the shipments going via Dolton, and suggesting that the auditor instruct the agent at Chicago Heights so to do.

The Auditor replied:

> This matter should be taken up by your department with our agent at Chicago Heights in the same manner in which you took up the instructions as to billing oil from Dolton Station. I would refer you to your letter dated October 24, 1894, to the agent at Dolton, and also to your letter to me dated October 24th. As you issued full instructions in a former case, I do not see why this one should not be handled in the same manner.

Thereupon the general freight agent wrote again to the auditor, stating that he inclosed a copy of a letter which he had, as requested, written to the agent at Chicago Heights. This letter addressed to the agent was as follows:

> You will receive some oil from the Standard Oil Co., Whiting, Ind., via the E. J. & E., consigned to the Waters Pierce Oil Co., East St. Louis, Ill., and routed via Shelbyville and C. C. C. & St. L. Ry. The shipments will come to you billed at $3.50 per car, and you will please rebill them via Shelbyville, simply showing the weight, and noting in the freight column the word "prepaid" and showing no back charges. On the 1st and 15th of each month you will please send Mr. C. W. Hillard, vice-president and treasurer, a statement of your billing, also a relief claim for the E. J. & E. charges, and you will thereby get relief, Mr. Hillard collecting the charges from the Standard Oil Co.
>
> You will probably receive full instructions from Auditor Rubidge as to the manner in which the statements must be made up.

This letter to the agent at Chicago Heights thus clearly provides for blind billing, and the letter of the auditor above quoted shows plainly that the instructions to the agent at Chicago Heights were the same as the instructions given to the agent at Dolton under date of October 24, 1894.

The court will recall that the first tariff of the Chicago & Eastern Illinois naming the 6½-cent rate was issued October 24, 1894, the very date of this letter providing for blind billing.

As already stated this method of blind billing is admitted by various railroad officials to be an unusual method. Mr. Felton, traffic manager of the Standard Oil Company, himself stated that a possible object of blind billing was to prevent a competitive railroad from knowing the rate (Felton, p. 1611,

vol. 14), and that he should think a blind bill would be a "red flag calling the attention of railroad employees to the fact that something was secret; * * * that there might possibly be a secret rate; not necessarily, but that there might possibly be one." (Felton, p. 1874, vol. 14.) Finally, as already stated, Mr. Reilly, the present general freight agent of the Chicago & Eastern Illinois Railroad, who however was not in that position at the time of the existence of the 6¼-cent rate, testified that he knew of no other object of blind billing than concealment of the rate. (Reilly, p. 418, vol. 20.)

It is certain, therefore, that the Chicago & Eastern Illinois Railroad's rate of 6¼ cents from Whiting to East St. Louis, although filed with the commission in the peculiar manner which we have described, was intended to be a secret rate. As in the case of the secrecy maintained by the Alton railroad on similar shipments, it is impossible to believe that the purpose was merely the concealment of the rate from competing railroads. While there is no definite proof that the rate on the Eastern Illinois was put in at the instance of the Standard Oil Company and that the secrecy was maintained at its instance, it is apparent that the chief beneficiary of the secrecy was the Standard itself, and it is difficult to believe that the Standard was ignorant or innocent in regard to it. The method of collection through the auditor's office was itself an unusual method, and put the Standard on inquiry as to the character of the rate. The connivance of the Standard with the Chicago & Eastern Illinois in the secrecy of the Evansville and Grand Junction rates, which we have already shown, further strengthens the inference that the secrecy in the case of the East St. Louis rate was not only with the knowledge, but at the instance of the Standard Oil Company. The similarity of the methods used in filing the tariffs and in the billing and collection of the charges is striking. The East St. Louis rate, like the Grand Junction rate, was made to read from Dolton, and like the Grand Junction rate it was handled by means of blind waybills and the charges were collected through the auditor's office. The Evansville rate was concealed by the false entry of the legal rate in the waybills, and the charges here also were collected through the auditor's office.

The attempted justification of the 6-cent rate on the Alton and Burlington roads, which it is admitted was not filed by those roads with the Interstate Commerce Commission, by means of this alleged legally filed rate of 6¼ cents over the Chicago & Eastern Illinois, thus falls to the ground. The Eastern Illinois 6¼-cent rate was just as secret and illegal as the rates of the Alton and Burlington, and its only legal rate was the 18-cent rate.

CONCLUSION AS TO THE EAST ST. LOUIS RATES.

The volume of traffic shipped from Whiting to East St. Louis on these secret rates of 6 and 6¼ cents was enormous. It covered not merely oil destined to East St. Louis proper for local consumption, but also oil destined to East St. Louis for reconsignment to points throughout the Southwest and very large shipments of oil consigned directly to St. Louis, Mo. Thus, from October, 1902, to June, 1905, the weight of the oil shipped from Whiting to East St. Louis over the Alton alone was no less than 155 million pounds, or approximately 4,000 cars. (Durand, 1625, vol. 4.) During the year 1904 the Chicago, Burlington & Quincy transported 1,661 cars (averaging about 46,000 pounds each) for the Standard from Whiting to East St. Louis, and figures for selected months from 1900 to 1903 and for 1905 show shipments ranging from 67 to 325 cars per month. (Durand, 1631, vol. 4.) During the period from January, 1903, to June, 1905, figures for 3½ months being missing, the shipments from Whiting to East St. Louis over the Chicago & Eastern Illinois amounted to more than 101 million pounds. (Durand, 1652–1653, vol. 4.) It thus appears that the aggregate shipments over the three roads were considerably over 150 million pounds per year, and the difference between the freight charges at the rate of 6 cents and at the legal rate of 18 cents amounted to more than $180,000 per year. The difference between the charges at the rate of 6 cents and the charges at the rate of 10 cents, which was subsequently put into effect as an open rate, would be equal to more than $60,000 per year.

The advantage to the Standard through these secret rates, however, as in the case of the secret rates to Evansville and Grand Junction, was much greater than the mere saving in freight charges, as they served to build up and maintain the

Standard's substantial monopoly throughout the Southwest, a monopoly which appears from the reports of the Waters-Pierce Oil Company showing the proportion of the business controlled by it. For the eleven months ending November 30, 1904, the Waters-Pierce Oil Company, including the Republic Oil Company, another Standard concern, reported that its sales of refined oil and gasoline in its territory in the United States were 86 per cent of the total sales by all concerns. (Petitioner's Exhibit 300 G.)

The enormous importance of the various secret rates enjoyed by the Standard on shipments from Whiting, namely, the Evansville rate, the Grand Junction rate, and the East St. Louis rate, can now be fully appreciated. Shipments under these rates covered the larger part of the South and Southwest, and they enabled the Standard to reach this territory at a transportation cost far below that of competing refining concerns in Ohio and Pennsylvania. We shall show later that on shipments from Whiting to the West, in addition to the natural advantage which accrued from the location of its refinery nearer to the point of consumption than the then competing refineries, the Standard enjoyed other unjustifiable advantages through the failure of the railroads to make joint through rates from eastern refineries. It is impossible that all these advantages to the Standard in rates, whether secret or open, should have come about by mere accident, or without conspiracy and collusion between the Standard and the railroads for the purpose of shutting out the independent concerns. The proposition of the defendants that these rates were made by the railroads merely for the purpose of getting the traffic, without any connivance or influence of the Standard Oil Company, and without any intent of favoring it at the expense of competitors, will not appeal to the judgment of the court.

Finally, as showing that the railroads recognized both the illegality and the discriminatory character of the rates from Whiting to Evansville, Grand Junction, and East St. Louis, we wish to emphasize the fact, already pointed out from time to time, that every one of these rates was taken out by the railroads immediately after its discovery by the Bureau of Corporations in its investigation. All three of the lines which made the 6 or 6¼ cent rate to East St. Louis took it

out in June or July, 1905, immediately on its discovery, the rate being raised to 10 cents. The Evansville rates of 6 and 8¼ cents were taken out in November, 1905, immediately on their discovery, and thereafter the legal rate of 11 cents, which had long been in existence, was actually applied. The Grand Junction rate of 13 cents was taken out about the same time, also immediately after its discovery, and thereafter the shipments which had formerly passed through Grand Junction were handled by a combination of the 11-cent rate to the Ohio River crossings with the legally published rates from such crossings to final destination in the South. That the rates were not merely improper, because unfiled, but that they were discriminatory, was evidently recognized by the fact that, instead of simply filing the formerly unfiled rates and thereby making them legal, the railroads took out the rates and thereafter charged higher rates on the transportation of the oil.

SECRET RATES TO ALEXANDRIA, LA., AND TO OTHER LOUISIANA POINTS BY WAY OF ALEXANDRIA.

The Standard Oil Company (or, rather, the Waters-Pierce Oil Company, a subsidiary concern) for years prior to 1906 made use of a special mimeograph tariff naming a rate of 25 cents per 100 pounds from St. Louis and East St. Louis to Alexandria, La., while the same railroad which issued this tariff was publishing conspicuously a rate of 30 cents per 100 pounds to the same point, and actually charged that rate on certain independent shipments. The Standard also made use of a special memeograph tariff naming a rate of 15 cents per 100 pounds from St. Louis to Alexandria on oil destined beyond Alexandria, and combined this rate with unfiled state rates from Alexandria to various destinations in Louisiana to give a total charge much less than the conspicuously published through rates from St. Louis and East St. Louis to these destinations. These arrangements are described in detail by Mr. Schindler (pp. 1695–1709, vol. 4), and illustrated by Petitioner's Exhibits 592 to 606 inclusive. It will be remembered that the oil which had these advantages in rates from St. Louis to Louisiana points had already enjoyed a secret low rate from Whiting to East St. Louis.

RATE TO ALEXANDRIA PROPER.

The tariff naming the 25-cent rate from St. Louis to Alexandria locally was issued by the Missouri Pacific Railroad (St. Louis, Iron Mountain & Southern), effective July 16, 1896, and the same rate was continued by a subsequent issue of August 17, 1904. (Petitioner's Exhibits 592 and 593.) Both of these tariffs, to be sure, were filed with the Interstate Commerce Commission, but they were inconspicuous mimeograph sheets, containing no other rates. Meantime, on August 10, 1897, the Missouri Pacific Railroad (St. Louis, Iron Mountain & Southern) published and filed a conspicuous printed tariff naming rates on various commodities from St. Louis to Alexandria, and three or four other Louisiana points. This tariff plainly named a commodity rate of 30 cents per 100 pounds on oil from St. Louis to Alexandria. This tariff naming the 30-cent rate, issued in 1897, was succeeded by other issues of 1899, 1900, 1902, 1903, and 1905, all similar in being conspicuous printed tariffs, and all naming the same 30-cent rate, which continued in force at least until after 1906. (Schindler, pp. 1696–1697, vol. 4.)

These 30-cent tariffs all applied from St. Louis and East St. Louis, and also from Bixby, Ill., a junction point on the St. Louis, Iron Mountain & Southern. (See Stith, defendants' testimony, p. 1979, vol. 14.)

Throughout the period to 1906 the Standard Oil Company continued to ship from St. Louis and Bixby to Alexandria at 25 cents. Mr. Schindler testified to the waybills of a large number of cars of oil shipped during 1904 to 1906 by the Waters-Pierce Oil Company from St. Louis to Alexandria at the rate of 25 cents per 100 pounds (Petitioner's Exhibit 594), and also to a large number shipped from Bixby, Ill. (Petitioner's Exhibit 595), to the same destinations at the same rate. (The rate of 23½ cents appearing on certain shipments from St. Louis, in Exhibit 594, is explained by the fact that the railroad company absorbed bridge charges of 1½ cents per 100 pounds on shipments originating at East St. Louis.)

It is contended by the defendants that the 25-cent rate, having been duly filed with the Interstate Commerce Commission, was a legal rate and took precedence over the 30-

cent rate, it being the usual custom of railroads, according to these witnesses, to apply always the lowest rate, and it not being uncommon to have two rates in existence at the same time. They point to the fact that, while the tariff of 1897, naming the 30-cent rate, specifically canceled a number of preceding tariffs, it did not make any reference to the tariff containing the 25-cent rate, which they contend therefore remained uncanceled. They argue further that the 25-cent rate was specifically a rate from St. Louis and East St. Louis to Alexandria alone, while the 30-cent rate was not intended particularly to apply to Alexandria, but was named alike to Alexandria, Shreveport, Boyce, Monroe, and one or two other points. It is further contended that the 30-cent rate to these points applied not merely from St. Louis and East St. Louis, but also from a number of other points named in the tariff in the vicinity of St. Louis, and further provided for the use of the rate on a differential basis on shipments coming from other points. In other words, it is argued that the 30-cent rate was a general rate, and the 25-cent rate a specific and narrowly limited rate, and that the two do not therefore particularly conflict. (Stith, p. 1976, vol. 14.)

We do not believe that this explanation of the disparity between the two rates is adequate, but believe, on the contrary, that the continued and repeated publication of the 30-cent rate to Alexandria was intended to deceive the shippers, and that the 25-cent rate was intended for the benefit of the Standard Oil Company alone. It would have been an easy matter, in the large tariffs referred to, to show the rate of 30 cents to the other towns and the rate of 25 cents separately to Alexandria. The theory that as to points of origin the 30-cent rate was more general than the 25-cent rate, and was therefore intended to apply on some shipments on which the 25-cent rate would not apply, has no validity. There are no refineries in the vicinity of St. Louis, or were none at the time these shipments were made. Shippers of oil were interested in the rates from St. Louis and East St. Louis, and not in the rates from points like Carondelet and other suburbs in the vicinity of St. Louis, from which, according to Mr. Stith, the 30-cent rate would have applied. Moreover, the suggestion that the tariff containing the 30-cent

rate provided for a rate basis for shipments coming from eastern points is not true with respect to oil, for the tariff itself states simply that on shipments coming from such points the sum of the local rates will apply. Practically the 30-cent rate was a rate from St. Louis and East St. Louis in direct conflict with the 25-cent rate, and the publication of it could have no other effect than to deceive shippers. While the question may not have been settled in the courts, it appears to us that the conspicuous publication of a higher rate subsequent to the publication of a lower should operate as a cancellation of the lower rate, even though specific reference to such cancellation is not made.

Most important of all, however, as showing the intent of the railroad company that the 25-cent rate should be used for the benefit of the Standard Oil Company alone and the 30-cent rate on shipments of competitors, is the fact that whereas all shipments made by the Standard up to the early part of 1906 were carried at 25 cents from St. Louis, East St. Louis, or Bixby, the railroad during October, 1904, July and September, 1905, and February, 1906, transported 5 cars of oil from Bixby to Alexandria for independent concerns (the Bonner Oil Company and John M. Lance) on which it charged 30 cents (Petitioner's Exhibit 595), although during the same months, except October, 1904, shipments were also made from Bixby for the Waters-Pierce Oil Company at 25 cents. It is true that one shipment was carried for the Bonner Oil Company in December, 1905, at 25 cents, but we believe that this was merely an oversight of the employees of the railroad company, and was assumed to be such by the shipper and consignee.

Mr. Stith, of the Missouri Pacific, sought to explain the application of the 30-cent rate on these independent shipments as due merely to error, stating that Bixby was a new station, established about 1903, that it was difficult to get a good class of employees there, and that, particularly at first, many mistakes in billing had taken place at that station, and that there was still some trouble in 1906. (Defendants' testimony, pp. 1989–1992, vol. 14.) Counsel for the defense may also point to the fact that 2 cars shipped by the Waters-Pierce Oil Company from Bixby during 1905 and 1906 were also billed at 30 cents, although the rate was sub-

sequently reduced through the general office to 25 cents, while no such reduction was made on the shipments of the independent concerns. We do not believe, however, that mere error will explain the fact, shown in Petitioner's Exhibit 595, that of 17 cars shipped by the Waters-Pierce Oil Company from Bixby to Alexandria from November, 1904, to May, 1906, 15 were billed in the first instance at 25 cents, while of 6 independent shipments during the same period 5 were billed at 30 cents.

It seems to us, therefore, clear that the 25-cent mimeograph tariffs, although filed with the Interstate Commerce Commission, were not intended to come to the knowledge of shippers generally through the ordinary channels, namely, through the local agents or general office of the railroad itself, but that the large and conspicuous tariffs were made to name the 30-cent rate in order to deceive independent shippers and to permit the application of that rate upon their shipments.

RATES VIA ALEXANDRIA TO OTHER LOUISIANA POINTS.

We take up now the second class of shipments over the Missouri Pacific (St. Louis, Iron Mountain & Southern) above referred to, namely, from St. Louis via Alexandria to points beyond Alexandria in the State of Louisiana.

The Missouri Pacific Railroad, effective December 5, 1894 (Schindler, pp. 1701–1702, vol. 4), issued and filed a tariff naming a rate from St. Louis to Alexandria of 15 cents per 100 pounds, which rate was made applicable by the terms of the tariff only on shipments destined to points in Louisiana on the lines of the Southern Pacific Railway, and therefore would not be applicable to shipments stopping at Alexandria. This tariff was filed with the Interstate Commerce Commission, and a subsequent issue of October 3, 1896, continued the rate and was likewise filed with the Commission. Both of these tariffs were small mimeograph sheets of an inconspicuous character. The second appears as Petitioner's Exhibit 596.

This rate of 15 cents was used in conjunction with rates named by the Southern Pacific System (Morgan's Louisiana & Texas Railroad & Steamship Company and the Louisiana Western Railroad Company, controlled by the Southern

Pacific) from Alexandria to a number of destinations, about 10 in all, in Louisiana. These rates were contained in so-called state tariffs, which were not filed with the Interstate Commerce Commission. A copy of one of these tariffs, dated October 9, 1901, is Petitioner's Exhibit 597, and another is Petitioner's Exhibit 598. There is no pretense that these tariffs of the Southern Pacific were ever filed with the Interstate Commerce Commission. The defendants contend that they were not secret tariffs, for the reason that they are marked on their face as issued with the authority of the Louisiana commission. It may readily be that they were approved by that commission, or even filed with it, but that in no way constituted them an authority for an interstate shipment, and gave no notice to the shipper at St. Louis, or to the Interstate Commerce Commission, regarding the rates which would be applied on such interstate shipments.

The evidence shows that the Standard Oil Company made numerous shipments on the basis of this 15-cent rate from St. Louis to Alexandria and the unfiled state rates beyond Alexandria, the combination being less, as we shall show, than the published through rates to the final destinations. The evidence shows also that these were through interstate shipments. The waybills prepared at St. Louis or Bixby by the St. Louis, Iron Mountain & Southern Railway, of which Petitioner's Exhibits 600 and 603 are samples, showed, under the heading "Marks, consignee, and destination," the name of the consignee, usually, if not always, the Waters-Pierce Oil Company, and the final destination beyond Alexandria—for example, in Petitioner's Exhibit 600, the final destination Franklin, and in Petitioner's Exhibit 603, the final destination St. Martinsville. The railroad company at St. Louis or Bixby could have made these entries on the waybills only from shipping instructions received from the shipper.

Mr. Finlay, vice-president of the Waters-Pierce Oil Company, attempted to maintain that the shipments were not made on through consignments to the point of final destination, but were consigned to Alexandria, and reconsigned from that point. He did show that the freight charges were not paid directly from St. Louis or Bixby to the final destination, but that the charges as far as Alexandria were paid

to the St. Louis, Iron Mountain & Southern Railway, and the charges from Alexandria to final destination afterwards paid to the connecting lines. This fact, however, has nothing to do with the question whether the consignments were through consignments. Mr. Finlay was asked by the Government to produce the shipping orders or bills of lading covering the shipments, and promised to do so if his counsel approved, but they were never produced. The fact that the waybills showed the final destination, as already stated, is a clear indication that the shipping orders did so likewise. Mr. Finlay admitted that the cars were not unloaded at Alexandria, and there can be no question that, under the various court decisions these shipments were through interstate shipments. (Finlay, pp. 1949–1951, 1956, vol. 14.)

We believe that the use of this combination of the 15-cent rate with the unfiled state rates from Alexandria was a secret combination intended to give the Waters-Pierce Oil Company the benefit of a lower total charge than the conspicuously published through rates from St. Louis to the final destinations in Louisiana. In fact, no other explanation of the conspicuous publication of these through rates, which was made subsequent to the establishment of the combination based on Alexandria, can be given than that those through rates were intended to come to the knowledge of independent concerns and be applied upon their shipments, and to conceal from them the existence of the lower combination,

The Missouri Pacific Railroad and the Southern Pacific were parties to a series of tariffs naming rates on classes and commodities generally from St. Louis and East St. Louis to stations in Louisiana. (Schindler, pp. 1704–1705, vol. 4.) These tariffs, beginning with December 22, 1896, named rates on oil in carloads specifically—not class rates—from St. Louis, East St. Louis, and common points to the very points in Louisiana to which the unpublished and unfiled rates of the Southern Pacific from Alexandria applied, and to none other. The first of these tariffs to name such rates on oil was issued only a short time after the reissue of the 15-cent rate to Alexandria (October 3, 1896). They were repeatedly reissued after that.

The following statement compares the published through rates contained in these conspicuous tariffs with the rates

actually paid by the Waters-Pierce Oil Company, based on the combination of the 15-cent rate to Alexandria and the unfiled rates beyond Alexandria. (Petitioner's Exhibits 596, 597, and 598; Schindler, p. 1704, vol. 4.)

Destination.	Published through rate.	Rate actually charged.
	Cents.	*Cents.*
Crowley:		
Tank cars	40	32.5
Box cars	40	38.5
Lafayette	40	33.0
New Iberia	38	31.0
St. Martinsville	40	31.0
Franklin	38	31.0
Jeanerette	38	31.0
Opelousas	40	33.0
Morgan City [a]	36	31.0
Schriever [a]	36	29.0

[a] No shipments to these two points reported during 1904–1906.

It will be seen that the combination of rates was from 5 to 9 cents lower than the published through rate—a very conspicuous difference.

Mr. Schindler presented a list showing numerous shipments by the Waters-Pierce Oil Company from St. Louis or Bixby to Alexandria at the 15-cent rate, and the shipment of the same cars from Alexandria to Louisiana points at the rates named in these unfiled state tariffs. These shipments cover the period from January, 1904, to March, 1906. (Petitioner's Exhibits 599 and 602.)

We wish to emphasize the striking fact that the published through rates above mentioned were named only to the points to which the Waters-Pierce Oil Company was making (or could make) shipments at the lower rates based on the combination via Alexandria. The tariffs contained rates on classes and other commodities to a great many additional points, but the oil rates were to these places alone. Surely, nothing could be more misleading to the independent shipper than to find these through rates in conspicuous and familiar tariffs. Seeing them, he would never think of inquiring for a rate to Alexandria with a view to using it on shipments to these points; indeed, even had he known of the 15-cent rate he would naturally assume that it would be of no service in

making a total charge lower than the published through rate. We believe that the 15-cent rate to Alexandria, although filed with the Commission, was, like the 25-cent rate on shipments to Alexandria locally, not intended to be shown to shippers generally, and not available to them through the ordinary sources of information, namely, the local or general offices of the railroad.

Mr. Stith, at present in charge of the traffic of the Waters-Pierce Oil Company, but formerly the general freight agent of the Missouri Pacific and St. Louis, Iron Mountain & Southern lines, issued the 15-cent tariff of 1896, and also the tariff containing the published through rates of 1896, and other subsequent tariffs containing the same rates. It is evident that he must have known that the through rates were higher than the combination actually used, for he explains that the 15-cent rate was put in for the purpose of equalizing the cost of transportation to the points of final destination in Louisiana via New Orleans, the previous route, and in investigating to ascertain how this equalization would take place, he must necessarily have ascertained the rates that were to be put in force from Alexandria. (Stith, defendant's testimony, pp. 1970–1971, vol. 14.) He sought to explain the disparity between the published through rates and the combination via Alexandria by saying that the published through rates were made not merely by the Missouri Pacific (in conjunction with the Southern Pacific), but also by the Louisville & Nashville, the Mobile & Ohio, and Illinois Central railroads; in other words, that the tariff was a joint or association tariff. He says these other roads might not have been satisfied to handle the traffic on as low a rate basis as the Iron Mountain, but admitted that they could not expect to get much traffic unless they did so (pp. 1982, 1986, vol. 14). We believe that this explanation indicates merely either that the Missouri Pacific concealed from the other railroads who joined in these through rates the fact that it was making a lower combination of rates, or that all of the railroads together deliberately put in these misleading through rates in order to conceal from the competitors of the Waters-Pierce Oil Company the rates which were actually being paid on its shipments.

As an indication that the officers of the Missouri Pacific Railway recognized the impropriety, if not the illegality, of the 25-cent rate from St. Louis to Alexandria locally, and of the 15-cent rate on shipments going beyond Alexandria, they cancelled both of these rates in May, 1906, immediately after their discovery by the Bureau of Corporations. (Schindler, pp. 1695, 1702, vol. 4; Stith, p. 1992, vol. 14.) By this cancellation the only rates left in force were the 30-cent rate from St. Louis to Alexandria and the through rates above named from St. Louis to other destinations in Louisiana.

SECRET RATES FROM OLEAN, N. Y., TO POINTS IN NEW YORK AND VERMONT, AND OTHER SECRET RATES IN NEW YORK AND VERMONT.

We now turn to the discriminations by which the Standard Oil Company enjoyed a great and unfair advantage over its competitors in the shipment of oil to a large part of the State of New York and to the New England States generally. These discriminations were brought about in part by low and, as we believe we have proved, secret rates chiefly from the Standard's refineries at Olean, Buffalo, and Rochester, N. Y.; and in part by the failure of the railroads to make joint through rates from independent refining points in western New York, Pennsylvania, and Ohio to New England points, in accordance with the general practice with respect to other classes of commodities generally, which failure gave a great advantage to the Standard Oil Company from the fact that it supplied this territory chiefly by shipments made by water from its seaboard refineries, transported only short distances by rail.

The illegality and discriminatory character of the rates from Olean consist in the fact that the Standard Oil Company shipped oil from Olean to various points in Vermont, interstate traffic, on through shipping orders and bills of lading made out in the first instance by the Vacuum Oil Company, containing directions for the railroad to blind bill the goods, that is, show no rate; that the shipments took place under rates of the Pennsylvania and the New York Central, which rates were not filed with the Interstate Commerce Commission, or posted in the railway offices, but were covered by special rate orders marked "Not to be posted;" and that the

sum of these local rates gave a total rate for the Standard Oil Company of a little more than one-half the rate competitors were compelled to pay from refining points in the same territory.

The Standard Oil Company has a large refinery (operated by the Vacuum Oil Company) at Olean, N. Y. The Vacuum also operates lubricating oil works at Rochester, using chiefly material obtained from Olean. The Standard has another refinery at Buffalo. There are no independent refineries at either of these three places. Numerous independent refineries are situated in northwestern Pennsylvania, not far distant from Olean and Buffalo. The Standard Oil Company, for many years prior to 1906, enjoyed the advantage of low rates from Olean to Rochester and Buffalo, and other low rates from Buffalo and Rochester to numerous points in northern New York. These rates were so-called state rates, not filed with the Interstate Commerce Commission, and we believe the evidence shows clearly that they were secret. They were used not merely on shipments wholly within the State of New York, but also on a large volume of interstate shipments from Olean and Buffalo to points in Vermont. Still further, the Standard had a large number of low rates—likewise unfiled and, as we shall show, secret—within the State of Vermont, which were used on interstate shipments as well as state shipments.

These unfiled rates in New York and Vermont in many cases departed from the published and filed tariff rates between the same points. They were in all cases much lower than the rates from the independent refining points of northwestern Pennsylvania, which, under a normal system of rate adjustment, would have taken the same rates as Olean into most of this territory. The strenuous efforts of independent refiners to obtain more favorable rates were practically without result until the Government began to investigate the situation.

SECRET RATES FROM OLEAN TO ROCHESTER, GENESEE JUNCTION, AND BUFFALO.

Olean is situated on the Pennsylvania Railroad (formerly the Western New York & Pennsylvania), by which it is connected with Buffalo, Rochester, and Genesee Junction (the latter being a junction with the West Shore Railroad). The same railroad connects these points of destina-

tion with various independent refining points in Pennsylvania, including Warren, Struthers, Clarendon, Titusville, Oil City, Bradford, and Pittsburg. (Schindler, p. 1711, vol. 4.) For many years prior to 1907, the Pennsylvania Railroad Company had low unfiled rates from Olean to Buffalo, Rochester, and Genesee Junction, which rates were used on shipments by the Standard Oil Company destined not only to points within the State of New York, but also to Vermont and Canadian points. The rates to Rochester, at least, were in effect as far back as 1883 (Johnson, Defendant's testimony, p. 2224, vol. 15). These rates were extraordinarily low, being (after 1889) on oil in tank cars, 9 cents a barrel from Olean to Rochester and Genesee Junction, and 10 cents per barrel from Olean to Buffalo, equivalent per 100 pounds to 2.8 cents and 3.1 cents, respectively.

These rates were authorized by a series of documents called "special rate orders," issued by the Pennsylvania Railroad. Copies of these rate orders covering the period from March 5, 1902, to September 20, 1906, were introduced by the Government (Exhibits 607 and 608). They were all marked on their face "not to be posted."

Up to March 5, 1906, the rates were indicated as applying on petroleum products in general, but thereafter, and after the discovery of the rates by the Bureau of Corporations, they were confined to unfinished petroleum refinery stock, that is, practically to partly finished material sent from the Olean works to the Rochester works for further elaboration.

Very large shipments were made by the Standard Oil Company on these rates from Olean to Buffalo and Rochester, including both shipments terminating at those points locally and shipments destined to points beyond. (Conant, 1776, vol. 4.) The total shipments from Olean to Rochester in 1904 in tank cars were 463,905 barrels, and from Olean to Buffalo 55,925 barrels, and from Olean to Genesee Junction 8,791 barrels.

It may be added that there were also in these special rate orders low rates for oil in barrels, viz, 11 cents per barrel from Olean to Rochester and Genesee Junction, and 12½ cents to Buffalo, and there were some shipments made by

the Standard Oil Company on these barrel rates as well as in tank cars. (Conant, 1776, 1777, vol. 4.)

The extraordinarily discriminatory character of these rates from Olean may be seen by comparison with the rates and distances from the competing independent refining points in northwesern Pennsylvania to Rochester and Buffalo. (See Petitioner's Exhibits 609 and 610.) The rates are reduced to the basis of cents per ton mile in the petition (vol. A, p. 78), the accuracy of which is testified to by Mr. Schindler (vol. 4, p. 1732).

Compare, for instance, the rates and distances from Olean and Bradford, respectively, to Rochester. The rate from Olean was equivalent to 2.8 cents per 100 pounds for a distance of 106 miles. The rate from Bradford, a distance of 127 miles, was 9 cents per 100 pounds, or more than three times as much as from Olean. The rate per ton per mile from Olean to Rochester was 0.53 cent, from Struthers 1.45 cents, despite the general railroad principle that on longer hauls the charge per ton per mile should be lower than on shorter hauls. Almost as marked were the discriminations against the other independent refining points specified in the exhibits and in the petition, and also the discrimination as between Olean and independent refining points on shipments to Buffalo.

Mr. Johnson, division freight agent of the Pennsylvania Railroad, having jurisdiction over the territory in question, admitted the existence of these marked differences in rates. He contended, however, that the comparison between the rates was not a fair one, and went so far as to say he did not consider the rates discriminatory.

In the first place, he stated that on the shipments from Olean the traffic came to the railroad in large quantities, that it was loaded in the yards by the refineries, and delivered in the yards of the Vacuum Oil Company at Rochester without terminal expense to the railroad at either point. (Defendant's testimony, p. 2270–2271, vol. 15.) It is, of course, contrary to public policy and to the interstate commerce act that discrimination shall be made in favor of any shipper merely because his business is large. Moreover, Mr. Johnson admitted that on shipments from independent refining points also there would be no terminal expense to the railroad,

at least at the point of origin. (Defendant's testimony, p. 2276–2277, vol. 15.)

In the second place, Mr. Johnson stated that when the rate from Olean to Rochester was originally put in it was intended largely for use on crude oil and was also induced by reason of the competition of shipments of crude oil by another road; and, finally, that it was the understanding of the railroad that unless a low rate was made a pipe line would be built to Rochester. (Defendant's testimony, pp. 2224, 2228, 2229, vol. 15.) To this argument Mr. Felton added that the rate from Olean to Rochester was considered primarily an inter-refinery rate, and was used chiefly for shipments of partly finished products from the Olean works to the Rochester works of the Vacuum Oil Company. (Defendant's testimony, p. 1623, vol. 14.)

It is evident that, whatever motives may have led to the establishment of the rate, they would not justify its continuance under different conditions. The rate during recent years has not been used on crude oil nor confined to partly finished products of refining. The contention of Mr. Felton, that the rate was chiefly an inter-refinery rate, is completely negatived by the figures which he himself introduced (Defendants' Exhibit 117), which show that from 1903 to 1905 2,984 cars were shipped on this rate from Olean to Rochester which were destined to other points beyond Rochester. Moreover, of the 7,961 cars shipped to Rochester proper, a considerable number at least were not partly finished but wholly finished products intended for local consumption in that city. Even if it were proper to have such an exceedingly low rate on partly finished products passing between the refineries, that would not justify its application on finished products of higher value; and, as a matter of fact, the Pennsylvania Railroad, upon the discovery of the existence of the rate by the Bureau of Corporations, amended its billing orders so that the rate thereafter applied only on unfinished petroleum refinery stock. (See Petitioner's Exhibit 608, p. 1591, vol. 10.)

Finally, Mr. Johnson presents an argument to justify this rate which is quite different from and contradictory to the argument of Mr. Felton that it was primarily an inter-

refinery rate. He says a low rate was justified because it was to be used on shipments going beyond Rochester, being therefore virtually a proportion of a through rate rather than a local rate, and it is the custom of railroads generally to make such proportions lower than the local rates. He says that, unless the Pennsylvania Railroad had made such a low rate from Olean to Rochester, the territory in northern and eastern New York and in New England would have been supplied chiefly from the Buffalo refinery of the Standard Oil Company on through rates over the New York Central, and the Pennsylvania would have no participation in such traffic. He says, therefore, that the rate from Olean to Rochester, or from Olean to Buffalo, should not be compared with the local rates from independent refining points to those destinations, but with the proportions of through rates to other points which would accrue to the Pennsylvania Railroad on that part of the haul as far as Rochester or Buffalo. (Defendant's testimony, pp. 2229, 2252, 2253, vol. 15.)

Even if this argument were well founded, it would have justified the Pennsylvania Railroad only in putting in such a low rate as a proportional rate—that is, not applicable on shipments of finished products going to Rochester for local consumption, but only on shipments going beyond. It is not an uncommon practice of railroads thus to make a distinction between a proportional and a local rate. As a matter of fact, however, the rates from Olean to Buffalo were relatively much lower even than the proportions of through rates from independent refining points which would have accrued to the Pennsylvania for its haul from those points to Buffalo and Rochester on shipments destined to the territory which was actually supplied from Olean. For some years past, at any rate, the larger part of the shipments which were made from Olean to Rochester destined to points beyond went to places in northern New York. This appears from the list of destination and the number of cars going to each in Petitioner's Exhibit 626. Among others, numerous shipments went to Oswego, Ogdensburg, Watertown, and to other points on the Rome, Watertown & Ogdensburg road in northern New York. None went to New England except points in Vermont, and it is therefore beside the issue to compare the Olean-Rochester rate with proportions of through rates to

Boston, for example. We have not undertaken to ascertain the rates from independent refining points to all the destinations shown in this list, or the proportions thereof accruing to the Pennsylvania Railroad, but we desire to call the attention of the court to a comparison between the rates from Olean to Rochester and Buffalo, and the proportions of the rates from independent refining points to a number of points on the Rome, Watertown & Ogdensburg Railroad which would have accrued to the Pennsylvania up to Rochester and Buffalo. These are shown in Petitioner's Exhibit 1039.

It will be seen that whereas the rate from Olean to Rochester was 2.8 cents per 100 pounds, the Pennsylvania Railroad received from independent shipments made from Bradford, a point very near Olean, to Cape Vincent, Morristown, Ogdensburg, Clayton, Watertown, and Norwood, no less than 8.8 cents as its proportion of the haul as far as Rochester. The rate per ton per mile from Olean to Rochester was 5.3 mills, while the proportions accruing to the Pennsylvania Railroad on such independent shipments from Bradford would have been 13.7 mills per ton per mile. Similar discriminations appear as between the rate from Olean to Rochester and the proportions of through rates from Warren and Titusville, independent refining points chosen simply by way of illustration from among others.

All the arguments, therefore, seeking in any way to justify the enormous difference between the rates from Olean to Buffalo and Rochester, and the rates from independent refining points to the same places prove wholly unfounded. The fundamental and only reason for the difference in rates was that the Standard used the rates from Olean, and independent refiners the other rates.

As we have already stated, these rates of the Pennsylvania from Olean to Rochester and Buffalo were not filed with the Interstate Commerce Commission. However discriminatory they were it was not technically illegal (so far as federal law is concerned) to apply them on local shipments between these points, or on shipments going beyond to other points in the State of New York. It was, however, clearly illegal to apply them on interstate shipments, as was done in the case of large numbers of cars destined to points in Vermont, as we shall show more fully later. The Pennsylvania Rail-

road had a legally filed tariff which might have been applied on shipments from Olean to Rochester destined to points in other States, and which was in fact the only legal rate between those points applicable on interstate shipments. This was a class tariff. The Pennsylvania Railroad, in the absence of special commodity rates, makes petroleum 5th class, and its filed 5th-class rate from Olean to Rochester was 9 cents per 100 pounds, as against 2.8 cents, the rate actually applied. (Schindler, pp. 1712–1713, vol. 4.)

Not only were these rates from Olean to Rochester and Buffalo unfiled, but, as we shall show later, they were also secret. A consideration of this point is reserved until the manner in which the rates were combined with other rates on through shipments has been fully pointed out.

USE OF THESE SECRET STATE RATES ON INTERSTATE SHIPMENTS FROM OLEAN TO VERMONT.

As we have already stated, the unfiled rate of 9 cents per barrel, or 2.8 cents per 100 pounds, from Olean to Rochester was used on interstate shipments going to Vermont. From Rochester to Norwood, N. Y., over the New York Central Railroad, these shipments were carried at another rate, 9 cents per 100 pounds, which was not filed with the Interstate Commerce Commission, while from Norwood to Vermont points it was carried over the Rutland Railroad on filed rates, which rates, however, as we believe the evidence will show, the railroad sought to conceal from independent shippers. There was no published through rate from Olean to points in Vermont via this route, but that does not make the use of the unfiled rates any more legal. Moreover, that part of the haul from Olean to Norwood was covered by a through published rate filed with the Interstate Commerce Commission very much greater than the combination of rates between those two points actually used on the Standard's shipments. The total charge to the Standard from Olean to Vermont points was very much lower than the rates available to independent refiners at points in the same general rate-making territory as Olean.

The rate of 9 cents per 100 pounds from Rochester to Norwood which was used in this combination was in existence at least as far back as 1899 (Petitioner's Exhibit 612;

stipulation, Defendants' testimony, 3663, vol. 17), and no doubt this or some similar rate was used much earlier. It was covered by a series of documents known as rate orders, which were ordinarily issued annually and made to expire with the current year, but were reissued from time to time. Petitioner's Exhibits 612 and 613 contain copies of some of these rate orders. Like the rate orders of the Pennsylvania Railroad, they are marked "Not to be posted," and there is no contention that they were filed with the Interstate Commerce Commission. It may be noted at this point that the New York Central Railroad has been convicted for transporting oil on this unfiled 9-cent rate from Rochester to Norwood in interstate commerce going to Vermont. (Kallman, Defendants' testimony, 2898, vol. 15.) Evidence as to the secrecy of the rate will be presented later.

For many years prior to 1906 the Rutland Railroad and its predecessor lines had very low rates on oil from Norwood, its point of junction with the New York Central, to Burlington, Rutland, and Bellows Falls, Vermont, which rates were used in conjunction with the unfiled rates already mentioned from Olean to Rochester, and from Rochester to Norwood. These rates were covered by tariffs filed with the Interstate Commerce Commission in 1893, 1896, and 1898, respectively. (For copies of these tariffs see Petitioner's Exhibits 615, 616, and 617.) They named a rate on oil in tank cars from Norwood to Burlington of $23 per car, to Rutland of $28 per car, and to Bellows Falls of $30 per car; also a rate on lubricating oil in barrels from Norwood to Burlington of $23 per car. They did not apply at all on oil (other than lubricating oil) in barrels, that is, shipped in box cars. We shall later present evidence tending to show that these rates, although filed, were designed to be kept secret. It would never occur to an independent shipper, not specially informed by the railroads as to the situation, to make a shipment to Norwood and ascertain the rate from there to points in Vermont. Even, however, had independent refiners known of these low rates, they could have gained little advantage from them, because they had not the advantage of the secret low rates between Olean and Rochester and Rochester and Norwood, but would have

had to pay a rate of 26½ cents per 100 pounds in order to reach Norwood.

These tank-car rates above mentioned were extraordinarily low rates for the distance transported.

To compare the rates with rates quoted in the usual manner, it is necessary to reduce them to the basis of cents per 100 pounds, and the result of this reduction, of course, depends upon the average weight of the cars actually shipped. Mr. Schindler, a witness for the Government, testified that he had examined the shipments of 23 cars, selected at random, shipped during 1903 and 1904 from Olean to Vermont points, the average weight of which was about 65,000 pounds (Schindler, 1726, vol. 4), and he made a computation of the rate per 100 pounds on that basis. There is a slight disparity between this computation and the computation shown in certain tables in the petition (vol. A, pp. 79–80), due to a difference in the weight taken as the basis of computation. The defendants sought to show that 65,000 pounds was too high an average weight, and introduced an exhibit showing the entire shipments for five years, 1900 to 1904, in which the average weight was about 57,000 pounds per car. This exhibit itself showed the average weight for 1903 to be 71,100 pounds, and for 1904, 64,319 pounds, the two years together showing a higher average than the 65,000 pounds used by Mr. Schindler. Nevertheless, in order to avoid any dispute on this minor matter, we here present the rate per 100 pounds on the basis of the defendants' average of 57,004 pounds per car. (See Defendants' Exhibit 120; Defendants' testimony, 1633, 1634, vol. 14.) On this basis, the rate from Norwood to Burlington was equal to 4 cents per 100 pounds, from Norwood to Rutland, 4.9 cents, and from Norwood to Bellows Falls, 5.2 cents. (Note that the figures in Defendants' Exhibit 120, given for Bellows Falls, should be the figures for Rutland, and vice versa, as subsequently corrected in Mr. Felton's testimony.)

These were exceedingly low rates for the distances in territory of the character of northern New York and Vermont. This may be appreciated from the fact that on the Rutland Railroad, generally, third-class rates applied on oil in carloads, and the third-class rate from Norwood to Burlington was no less than 33 cents per 100 pounds, or 8 times the

rate actually charged on tank-car shipments of the Standard Oil Company. This 33-cent rate, moreover, was the rate which an independent shipper who happened to ship in barrels (other than lubricating oil) would have had to pay even if he had known of the existence of the lower rates on tank-car shipments. (Schindler, 1724, 1725, vol. 4.)

The combination of these three sets of rates thus described gave an exceedingly low total charge on shipments from Olean to these Vermont points. The rate from Olean to Burlington was equivalent to 15.8 cents per 100 pounds, namely, 2.8 cents from Olean to Rochester, 9 cents from Rochester to Norwood, and 4 cents from Norwood to Burlington. The rate from Olean to Rutland would amount to 16.7 cents, and to Bellows Falls, 17 cents. These low rates contrast strikingly with the rates available to competing independent refiners at points neighboring to Olean. Thus, from Oil City, on shipments made by the northern route, over which the Standard shipments moved, the lowest rate to Burlington, Rutland, and Bellows Falls was 33 cents, and the only rate to Burlington by any route 33 cents, although Rutland and Bellows Falls could be reached by another route, passing south of Lake Champlain, at 23½ cents, even that rate, however, being much higher than the Standard's rate. (See Petitioner's Exhibits 624, 625; Schindler's testimony, vol. 20, p. 428; vol. 4, p. 1733.) Similar differences existed with respect to the rates from other independent shipping points. For instance, from Warren, Pa., the rate to Burlington was 33 cents for a distance of 523 miles by the shortest route, as compared with 15.8 cents from Olean, a distance of 451 miles by the route actually used. The lowest rate from Warren to Rutland, which did not apply by way of the northern route, was 23½ cents for 456 miles, as against 16.7 cents from Olean, a distance of 518 miles by the route actually followed. From Warren to Bellows Falls the rate was 23½ cents for 509 miles, as compared with 17 cents from Olean for 571 miles. (Petition, vol. A, p. 80; Schindler, 1732, vol. 4; see also table of rates from other independent refining points to Burlington, Rutland, and Bellows Falls in Schindler's testimony, 1733, vol. 4; the slight disparities in the rates stated from Olean, as we have explained,

are due to differences in the estimated average weight of cars.)

There can be no question that the shipments of oil from Olean to Burlington, Rutland, and Bellows Falls on this combination of rates, in which two unfiled state rates were employed, were through interstate shipments. Mr. Johnson, of the Pennsylvania road, claimed that there was no "common arrangement" between the New York Central and the Pennsylvania with respect to this transportation, and pointed to the fact that the charges of the Pennsylvania road from Olean to Rochester were collected by that road and the charges of the New York Central and Rutland roads collected by those lines, respectively, no through payment being made by the shipper from Olean to destination. Nevertheless, the shipments moved on a single shipping order, prepared by the Vacuum Oil Company at Olean, which shipping order showed the route and the final destination in Vermont. The bill of lading, or receipt, given by the Olean agent of the Pennsylvania to the Vacuum Oil Company, the shipper, showed the same facts. Mr. Kallman, of the New York Central, admitted that neither the Standard Oil Company, nor the Vacuum Oil Company, gave any shipping instructions or orders directly to the New York Central for this transportation, but that the only direction which the New York Central got was from the Pennsylvania. (Kallman, p. 2304, vol. 15.) The documents in evidence with regard to the method of handling the shipments indicate that the same was true with respect to the Rutland Railroad, which received its directions for the shipment between Norwood and Burlington from the New York Central. This method of handling the business is itself a "common arrangement" between the railroads.

We call the attention of the court to Petitioner's Exhibit 611, which consists of a series of the documents of the several railroads covering the transportation of one car of oil from Olean to Burlington on this rate combination which we have described. It is admitted that the other shipments were made on similar documents. Exhibit 611 A is the bill of lading, which it is admitted was prepared in the office of the Vacuum Oil Company at Olean. This shows the consignee and the final destination at Burlington, Vt., and

indicates the routing via the Pennsylvania Railroad to Rochester, the New York Central to Norwood, and the Rutland Railroad. The other documents of the series are the waybill of the Pennsylvania, the transfer card and interchange report covering the transfer of the car to the New York Central at Rochester, the New York Central's waybill from Rochester to Norwood, and the waybill of the Rutland Railroad from Norwood to Burlington. The waybills of the Pennsylvania and the New York Central show the consignee and the final destination in Vermont.

Mr. Johnson, of the Pennsylvania, attempted to maintain that the bill of lading (Petitioner's Exhibit 611 A) was not a through bill of lading, because it did not show a through rate, and because it provided that the Pennsylvania should not be responsible after the oil left its road. He admitted, however, that this bill of lading was on the usual form used for all business, including that passing to other railroads (pp. 2279–2281, vol. 15). Mr. Kallman, of the New York Central, moreover, said he did not know of any distinction between a through bill of lading and a bill of lading, and that this was a bill of lading for a shipment received at Olean and consigned to Burlington. He admitted also that this was traffic originating at a point in one State destined to a point in another State, and consigned through. (Defendants' testimony, 2303, 2304, vol. 15.) We can not conceive of any possible doubt, in view of the method by which the business was conducted, that each and every part of the haul between Olean and Burlington was interstate in character, and subject to the obligation of the interstate commerce law, that the rates on which the oil moved should be duly filed with the Interstate Commerce Commission and published.

DEPARTURE FROM THE FILED RATE OF 26½ CENTS FROM OLEAN TO NORWOOD.

As already stated, there was no published through rate on oil from Olean to Burlington, Rutland, or Bellows Falls via the route over which the shipments of the Standard Oil Company moved. Nevertheless, the use of the unfiled state rates we have described constituted a departure from legally filed tariffs which should have been applied on interstate shipments. Aside from the legally filed tariff from Olean to

Rochester of 9 cents per 100 pounds, which we have already described, there was also a duly filed tariff from Olean to Norwood. This was a commodity rate on oil, not a class rate. It was 26½ cents per 100 pounds, as against the actual charge on the Standard's shipments of 11.8 cents, made up of 2.8 cents from Olean to Rochester and 9 cents from Rochester to Norwood. The Government claims that, assuming that the tank-car rates from Norwood to Vermont points were legal rates, the legal charge from Olean to these points would have been the sum of the 26½-cent rate and the tank-car rates, which would have given a total of about 30 cents to Burlington, and about 32 cents to Rutland and Bellows Falls, as against the actual charges of 15.8, 16.7, and 17.0 cents, respectively.

The Standard Oil Company was indicted and convicted for accepting concessions on shipments from Olean to Burlington, Rutland, and Bellows Falls, on which these unfiled rates were charged, the indictment alleging that the legal charge between Olean and Norwood was 26½ cents, which legal charge had not been applied.

This rate of 26½ cents appeared in a conspicuous tariff issued jointly by the Pennsylvania and the New York Central railroads, the latest issue of which (constituting Petitioner's Exhibit 619) was effective April 10, 1904. The same rate had been in effect, under other tariffs, for many years. Mr. Johnson testified that he thought it was put in about 1886. (Defendant's testimony, p. 2263, vol. 15.) The tariff was a printed one, of several pages, containing numerous rates on oil from Olean to points in New York and New England. It may be noted at this point that the rate of 26½ cents was also the published and filed rate from Oil City and various other independent refining points of northwestern Pennsylvania to Norwood. (Schindler, p. 1730, vol. 4.)

The defendants contend that this 26½-cent rate from Olean to Norwood did not apply via Rochester, the route over which the Standard made shipments at the combined rate of 11.8 cents, and was not therefore binding on the railroads or the shipper by that route. They contend that it applied by way of Buffalo only. This is merely a technical point, which is of really no significance, because it would have been just as illegal to ship on unfiled rates in the absence of any filed rate

as in the face of such a filed rate. Nevertheless, we do not believe that this contention of the defendants will appear justified to the court; and we believe further that the existence of the 26½-cent tariff is an evidence of the secrecy of the other rates, and that the fact that it was sent to the traffic officers of the Standard Oil Company, which is admitted, was a clear notice to the Standard of the illegality and discriminatory character of the rates which it was paying.

The tariff in question was a joint tariff of the Pennsylvania and New York Central railroads, among others, but these two railroads were the only lines parties to the tariff which had any route from Olean to Norwood.

Aside from other indirect routes, the Pennsylvania and the New York Central lines had two different routes by which oil could be transported from Olean to Norwood. The Pennsylvania Railroad has one line from Olean to Rochester, and a separate line from Olean to Buffalo. From Rochester the New York Central has at least two different ways of reaching Norwood, one following the entire distance over the Rome, Watertown & Ogdensburg division and the other running eastward over the main line of the New York Central to Syracuse or Utica, and thence over the Rome, Watertown & Ogdensburg to Norwood. From Buffalo there are also two distinct routes of the New York Central to Norwood, one passing through Rochester and the other running north of this, by way of Niagara Falls, following the Rome, Watertown & Ogdensburg throughout. According to division sheets applicable on the traffic from Olean, however, it appears that the actual route indicated on shipments by way of Buffalo was the latter, not passing through Rochester.

With respect to this question of the application of the 26½-cent rate between Olean and Norwood, we invite the attention of the court to the language of the tariff itself (Petitioner's Exhibit 619). The court will notice that it is a tariff from Olean exclusively, applying only to stations on the New York Central, Boston & Albany, and Rutland railroads. It states plainly (vol. 10, p. 1616) the rate to Norwood, 26½ cents, and does not state anywhere in the tariff that it is not applicable via Rochester. It is true that it states on the title page of the tariff: "Route: In accordance with agreed percentages and as stated within," and that above the statement

of the 26½-cent rate appear the words: "Route: In accordance with agreed percentages." It is true also that the percentage sheets between the Pennsylvania Railroad and the New York Central, put in evidence by the defendants (Defendant's Exhibits 114 A and 114 B), provided that shipments made from Olean should be routed via Buffalo, and not via Rochester, and that from Buffalo the route provided did not pass through Rochester.

These percentage sheets showing the routing, however, are not in any sense part of the tariff. They were not filed with the Interstate Commerce Commission, nor is it the custom to file such sheets with the commission. They were simply private arrangements between the railroads and private instructions to the agent how to route the freight. They could have been changed in a moment, without notice to the Interstate Commerce Commission or to the public, so as to make the routing via Rochester or any other junction of the two railroads. Neither the commission nor the public had any way of knowing from published documents what the routing would be.

We claim that the obvious meaning and effect of this tariff is to state that the rate and the only rate made jointly by the Pennsylvania and the New York Central on shipments between Olean and Norwood was 26½ cents, and that this was the rate by any route which these two roads might use, the railroads simply reserving to themselves the determination of the route which actually should be used. While the tariff with the language placed upon it regarding routing might not have bound the Pennsylvania and New York Central railroads to accept a rate of 26½ cents by any other route than that which they privately agreed upon, it did bind them not to accept a lower rate by any route whatever. We call the attention of the court to the fact that Judge Hazel, of the Federal District Court, in the criminal case against the Standard Oil Company above referred to, having had this point repeatedly brought to his attention in the arguments of counsel for the defendant, decided that the 26½-cent rate was the legal rate by any route consisting of the Pennsylvania and New York Central lines, including the Rochester route, and that a departure therefrom was a departure from the legally published tariff. (*U. S.* v. *Standard Oil Co. of N. Y.*, 158 Fed., 538.)

It is a further striking fact, as bearing upon the purpose of the railroads to make the 26½-cent rate a blind to conceal the actual rates charged to the Standard Oil Company between Olean and Norwood, that even by way of the Buffalo route, to which the witnesses assert that the 26½-cent rate was confined, the Standard Oil Company could have made shipments at a much lower combination of unfiled rates. As already stated, the unfiled rate of the Pennsylvania from Olean to Buffalo was 10 cents per barrel, equal to 3.2 cents per 100 pounds. At least during 1905, the New York Central had in effect an unfiled tariff naming a rate of 12 cents per 100 pounds from Buffalo to Norwood. (Stipulation, defendants' testimony, 3663, vol. 17. Mr. Kallman, assistant general traffic manager of the New York Central, testified from recollection that this rate had been in effect for at least a number of years—defendants' testimony, 2299, vol. 15—but when he was requested to produce the rate orders covering it as far back as possible, the earliest one he produced was dated July, 1905. It is therefore not clear that the rate was actually in effect earlier, although in furnishing the rate order no statement to the contrary was made.) The combination of these two rates made a total of 15.2 cents, on which the Standard Oil Company could have shipped from Olean to Norwood by way of Buffalo, in the face of the 26½-cent filed rate. While there is no evidence of any shipments going from Olean via this route, the New York Central furnished copies of waybills showing a number of shipments during the latter part of 1905 on this unfiled rate of 12 cents from Buffalo to Norwood, which shipments were consigned to points in Vermont and therefore interstate, thus constituting still another violation of the interstate commerce act. (Stipulation, defendants' testimony, 3663–3664, vol. 17.)

SECRECY OF THE RATE COMBINATION FROM OLEAN TO ROCHESTER, NORWOOD, AND VERMONT POINTS.

There can be no doubt that, technically, the shipments were illegal, since the rates from Olean to Rochester and from Rochester to Norwood on which they moved were not filed with the commission, and since the shipments, as we have already proved, were made on through consignments from one State to another. Numerous witnesses for the

defendants, however, testified that it was the common practice of railroads, prior to 1906, to use such unfiled state rates on interstate shipments, and that it was not then understood to be illegal. While a practice of violating the law does not make any particular violation lawful, this evidence might show good faith on the part of the Standard Oil Company and the railroads in the use of these unfiled rates, were it not for other evidence going to show that the rates were intended to be concealed from competing shippers and to give the Standard Oil Company an unfair and illegitimate secret advantage.

We have already called attention to the fact that the rate orders of the Pennsylvania covering the rate from Olean to Rochester, and the rate orders of the New York Central covering the rate from Rochester to Norwood, were marked "Not to be posted." Mr. Johnson, of the Pennsylvania, and Mr. Kallman, of the New York Central, however, as well as other witnesses for the defendants, asserted that this phrase was not in itself any indication of secrecy; that it was merely put upon all so-called state tariffs, not filed with the Interstate Commerce Commission, for the purpose of designating them as such state tariffs. Mr. Johnson testified that at various times he checked up the tariffs in the local station at Olean and found this rate order from Olean to Rochester in the same file as other tariffs. It was not posted on the wall of the station, but neither were interstate tariffs so posted. Mr. Kallman gave substantially similar testimony regarding the rate of 9 cents per 100 pounds from Rochester to Norwood, and stated that the New York Central had many other tariffs or rate orders of similar form on other commodities, all of which were kept by the local agents in their regular tariff files. Both Mr. Johnson and Mr. Kallman asserted that the rate orders on oil were not secret.

It may readily be that the Pennsylvania and New York Central roads did have numerous other rate orders marked "Not to be posted," and that those words alone do not necessarily indicate secrecy. It may be also, as stated by Mr. Johnson and Mr. Kallman, that these rate orders were kept in the files of the local agents of the Pennsylvania at Olean and of the New York Central at Rochester, although such local agents were not called by the defendants to testify on

that point. The court will note, however, that there were no independent shippers of oil at Olean or at Rochester, and that, even if the tariffs were on file at those points, they would not likely come to the attention of such shippers. They were not on file with the Interstate Commerce Commission nor were they sent to independent shippers.

We do not consider this testimony of Mr. Johnson and Mr. Kallman as conclusive, in the face of the other evidence which we shall now present, going to show the actual secrecy of this rate combination.

In the first place we consider that the conspicuous publication of a 26½-cent rate from Olean to Norwood in a joint tariff of the Pennsylvania and New York Central roads could have had no other purpose than to conceal the rate actually used. As we have already stated this 26½-cent rate was the same rate which was made from independent refining points in Pennsylvania near Olean. Olean would naturally be expected to take the same rate as these points, and a shipper seeing the published and filed rate from Olean would very naturally assume that it was the rate actually in force.

Mr. Johnson, of the Pennsylvania road, attempted to explain the naming of the 26½-cent rate from Olean to Norwood by saying that Norwood was named in the tariff merely because it was intermediate to, or in the neighborhood of, a number of other stations on the Rome, Watertown & Ogdensburg to which the same rate of 26½ cents was named in the tariff; and that it was intended to apply only on local shipments destined to Norwood proper, and not on shipments going beyond. The tariff (Petitioner's Exhibit 619) naming the 26½-cent rate to Norwood, under the same heading names that rate also to Cape Vincent, Morristown, Ogdensburg, Clayton, Watertown, and Carthage, all points on the Rome, Watertown & Ogdensburg Railroad, in northern New York and east of Oswego. (Johnson, vol. 15, p. 2247.)

The absurdity of this explanation of Mr. Johnson appeared when he was shown by counsel for the Government Petitioner's Exhibits 612 and 613, being rate orders of the New York Central which made a rate of 12½ cents from Rochester to all points on the Rome, Watertown & Ogdensburg division, Oswego and east, which would include all

the towns to which the 26½-cent rate was named. This rate of 12½ cents, in conjunction with the rate of 2.8 cents from Olean to Rochester, made a total charge of 15.3 cents, available on shipments of the Standard Oil Company to all of these points to which the 26½-cent rate was named. The waybills of shipments from Olean to Rochester show, moreover, that many cars were destined to these points via that route (Petitioner's Exhibit 626); for example, 57 cars during the year 1904 destined to Watertown, 33 cars to Ogdensburg, 21 cars to Clayton, 16 cars to Carthage, etc. Notwithstanding this fact, Mr. Johnson stated, in his oral testimony, that he understood that shipments had been made from Olean to these points since 1900 at the 26½-cent rate by way of Buffalo, but in a subsequent letter, admitted in evidence, he stated that he found no such shipments since 1900. (Vol. 17, p. 3661.)

It appears, therefore, that the 26½-cent rate to all of these points from Olean was nothing but a blind, and the shipments actually moved on a much lower combination. The question therefore arises why the Pennsylvania and New York Central railroads put in this rate. Mr. Johnson, of the Pennsylvania, claims that he knew only of his own rate from Olean to Rochester, and did not know of the rates from Rochester to Norwood and these other points; while Mr. Kallman, of the New York Central, on the other hand, says that he knew only of the New York Central's rates from Rochester, and did not know of the Pennsylvania's rate from Olean to Rochester. Each claims, therefore, that for aught he knew at the time the 26½-cent rate might have been the actual rate on such shipments.

Mr. Johnson says further that, though he had a conference with Mr. Goodman, of the New York Central, at the time the 26½-cent rate was put in, he did not tell him of the Pennsylvania's rate from Olean to Rochester, because he did not want the New York Central to know about it; that he wanted to keep it away from the New York Central, but not to keep it secret, and that he assumes that the New York Central did not want him to know its rates either. (Defendants' testimony, p. 2265, vol. 15.) Mr. Johnson says further that he had not noticed the fact that numerous shipments were being made from Olean to Rochester on the 2.8

cents per 100 rate, destined to points named as taking the 26½-cent rate, but that, had he known it, he would have known that they were not going on the 26½-cent rate. Counsel for the Government, again, pointed out to Mr. Kallman that, since the rate from Rochester to these points was either 9 or 12½ cents, the maintenance of the through 26½-cent rate from Olean, to which his railroad was a party, would have meant that the Pennsylvania was collecting, for the short haul from Olean to Rochester, either 17½ cents or 14 cents; he says he gave no thought to the question what that road was charging. (Johnson, 2248–2249; Kallman, 2305–2306, vol. 15.)

There is something ludicrous in the idea of the officers of these two railroads, the New York Central and the Pennsylvania, getting together and naming a through rate of 26½ cents from Olean to Norwood and the other points in question, when no shipments were being made at that rate although large shipments were being made to these points, each side knowing that it was handling such shipments for part of the distance at a very low rate, but failing to ask the other side what its rate for the remainder of the haul was. Even if it be true that the Pennsylvania did not know what the New York Central was charging, or the New York Central what the Pennsylvania was charging, it was evidently willful and intentional ignorance, and it is impossible to believe that either party thought that the charge of the other was such as to result in maintaining the through rate of 26½ cents which they were uniting in publishing. We claim, therefore, that the publication of the 26½-cent rate, which, it may be noted, was reissued during 1904, at a time when large shipments were being made at the much lower combination of rates by way of Rochester, is evidence of the intention of both the railroads to keep the rates from Olean to Rochester and from Rochester to these points of final destination secret, not so much from one another as from other railroads and from shippers other than the Standard Oil Company.

In the second place, as evidence of the intent of secrecy, we call the attention of the court to the fact that all the shipments from Olean to Rochester on the rate of 9 cents per barrel (2.8 cents per 100 pounds), as well as the ship-

ments from Olean to Buffalo and to Genessee Junction, were blind-billed; that is, that the waybills of the Pennsylvania Railroad prepared at Olean showed no rate of freight and no freight charges. The local agent at Olean did not collect the charges, but sent a statement of the shipments to the general auditor, who collected directly from the Standard Oil Company. (Conant, 1772, 1773, vol. 4; Schindler, 1716, 1719, vol. 4.) Moreover, the Standard Oil Company not only knew of this practice of blind-billing, but on its shipping orders delivered to the Pennsylvania Railroad at Olean it placed a stamp: "Agent, Olean, N. Y., Blind Bill to Rochester, N. Y." Petitioner's Exhibit 611 A is a copy of one of the receipts given to the Vacuum by the railroad, which receipt was similar in form to the shipping order, and was itself prepared by the Vacuum Oil Company and the stamp placed thereon by it. (Felton, vol. 14, p. 1875.)

We have elsewhere referred to the testimony of various witnesses, that blind-billing is a practice which may be used, and is at times used, for the purpose of concealing rates. Mr. Felton, testifying with respect to this particular case of blind-billing from Olean to Rochester, while he claimed that it was not intended to conceal the rate, said (vol. 14, p. 1874):

> I should think that it would be a red flag, calling their attention to the fact that something was secret. * * * That there might possibly be a secret rate; not necessarily, but there might possibly be one.

To be sure, his idea apparently was that, by thus notifying the employees that there might be something secret, blind-billing would tend to prevent that secrecy from being effective; but we believe that it is evident that the contrary would be the effect, and that, if the employees understood, from the practice of blind-billing, that it was the intention to keep the rate secret, they would, in conformity to that intention, do all in their power to keep it secret.

We have also called attention to the testimony of Mr. Reilly, general freight agent of the Chicago & Eastern Illinois Railroad, that, so far as he knew, the practice of blind-billing was always intended to conceal rates. (P. 418, vol. 20.) We have also shown that Mr. Hurlbut, of the Illinois Central, admitted that the blind-billing of the shipments from Whiting to Grand Junction was intended to conceal

the rate from other railroads, and we have given evidences to show, likewise, that the blind-billing of oil from Whiting to East St. Louis was a device for securing secrecy.

We do not therefore consider the testimony of Mr. Johnson, division freight agent of the Pennsylvania Railroad, to the contrary as worthy of belief. (Defendant's testimony, pp. 2239–2243, vol. 15.) That railroad is under indictment for shipping oil on this rate from Olean to Rochester, destined to points in Vermont, and that fact should be taken into account in judging of the credibility of Mr. Johnson's testimony. Moreover, the reasons which Mr. Johnson advances for the practice of blind-billing seem to us self-contradictory and of no weight whatever. He says (p. 2230, vol. 15) that the purpose of blind-billing was to enable the charges to be collected through the general auditor's office, instead of by the Olean agent; that the railroad was requested by the Standard Oil Company to collect charges in that way; that, when the arrangement was first made, it covered shipments from Oil City, Corry, and other points, as well as from Olean, and that it was a convenience to the railroad, as well as to the Standard, to make the collection in that way.

Even assuming that the railroad and the Standard Oil Company for proper reasons desired that the collection of freight charges on the Standard's shipments should be made through the general auditor's office, it by no means follows that this would necessitate the practice of blind-billing, or even make it advantageous. It would have been quite as easy to enter the rate and freight charges on the waybills and then send copies of the waybills, or lists of the shipments and charges prepared therefrom, to the auditor's office for collection. As a matter of fact, under general railroad practice all waybills (or copies thereof) containing the rate and charges are sent to the auditor's office for checking and revision in any case. Mr. Johnson sought to maintain that if the local agent at Olean had entered the rate and freight charges on the waybills, it would have necessitated additional labor; that at the auditor's office all that was necessary was to add up the weight of all the shipments and compute the charges in one total. On the other hand, however, he said that the saving of labor was not the primary question, the

primary object being to collect the charges through the auditor's office, to do which, as we have stated, in no way called for blind-billing. His statements and arguments are thus contradictory of one another. We may note at this point that while the New York Central collected its charges on oil shipped from Rochester to Norwood through its general auditor, it did not therefore consider it necessary to blind-bill it. Mr. Johnson was able to cite only one other instance in which the Pennsylvania Railroad, to his knowledge, had used blind-billing, and that was on coal shipped by the Erie Railroad to itself, for supply purposes, a special condition under which blind-billing might conceivably have some advantages (p. 2241, vol. 15).

Finally, as evidence of the secrecy of these rates from Olean to Rochester and from Rochester to Norwood and other destinations, we point to the failure of the railroads concerned to inform independent shippers of the existence of such rates and combinations of rates when repeatedly requested by such shippers for lower rates into northern New York and Vermont territory. As this evidence, however, bears not only on the secrecy of the rates now under consideration, but also on the secrecy of other rates hereafter taken up, including the filed rates from Norwood to Vermont points among others, we defer the consideration of this evidence for the time being. (See pp. 327 *et seq.*, *post.*)

OTHER SECRET AND DISCRIMINATORY RATES FROM BUFFALO AND ROCHESTER TO POINTS IN NEW YORK.

We have already called attention, in discussing the 26½-cent published rate from Olean to Norwood and other points, to the fact that, in addition to the unfiled rate of the New York Central of 9 cents from Rochester to Norwood, that company had other unfiled rates, of 12½ cents, from Rochester to all points on the Rome, Watertown & Ogdensburg division, Oswego and east, which were used in connection with the rate of 2.8 cents from Olean to Rochester on shipments of the Standard originating at Olean. This gave a total of 15.3 cents as against a printed and filed rate of 26½ cents from Olean to all these points, which rate of 26½ cents was also in force and actually applied from independent refin-

ing points near Olean. We now desire to emphasize the discriminatory character of this 12½-cent rate, and also to point out that discriminatory rates to still other points were made from Rochester and from Buffalo by the New York Central in unfiled rate orders. These rates from Rochester are shown in the rate orders already mentioned. (Petitioner's Exhibits 612 and 613.) They included a rate of 15 cents from Rochester to Malone, an important junction point in Northeastern New York. This rate of 15 cents to Malone, in conjunction with the rate of 2.8 cents from Olean to Rochester, made a through charge of 17.8 cents, whereas there was a published and filed tariff rate of 26½ cents from Olean to Malone. These rate orders also included a rate of 15 cents from Rochester to Saranac Lake, Partlow, and Beaver River, points on the Adirondack division of the New York Central, and of 20 cents to a number of other points on the Adirondack division. In conjunction with the rate from Olean to Rochester, the total charge on shipments from Olean to these places would be 17.8 cents, or 22.8 cents, respectively. These rates to Malone and Adirondack points had been in effect, with one or two changes, at least as far back as 1899. (Stipulation, p. 3663, vol. 17.) The rate of 20 cents from Rochester to points on the Adirondack division was reduced to 16 cents in March, 1905. (Petitioner's Exhibit 613 B.)

Still further, during part of 1905 at any rate, the New York Central made a rate of 18½ cents from Buffalo to all points on the Adirondack division south of Constable, which includes practically all points on that division in the State of New York. This rate from Buffalo gave the Standard a great advantage on its shipments to that territory from Buffalo, and could, besides, have been used on shipments originating at Olean and paying a rate of 3.2 cents from Olean to Buffalo. (Stipulation, p. 3663, vol. 17.)

Contrast these rates with the rates charged to independent refiners from points which should have taken the same rates as Olean and Buffalo, or rates only a little higher. We have already stated that the published rate from a number of these independent refining points in Pennsylvania to points such as Ogdensburg and Watertown, on the Rome,

Watertown & Ogdensburg division, was 26½ cents, and Mr. Westgate, an independent refiner at Titusville, testified to numerous shipments which he had made to this territory at that rate. (Westgate, 2855, 2856, vol. 6.) In other words, for a slightly longer haul, these independent refiners paid nearly twice the amount which the Standard paid on shipments from Olean, namely, 15.3 cents.

Again, the rate from these independent refining points to points on the Adirondack division of the New York Central was no less than 33 cents per 100 pounds. This was the third-class rate, which, under the Official Classification, is the rate on oil in less than carloads; and there being no lower rate on oil in carloads—although carload rates are usually, under ordinary railroad practices, much lower than less-than-carload rates—these refiners had to pay 33 cents on their carload shipments. Mr. Westgate testified to numerous shipments which he made on that rate from Titusville to Saranac Lake and other points on the Adirondack division, which the Standard could reach from Olean at either 17.8 or 22.8 cents, and from Buffalo, during part of the time at least, at 18½ cents. (Westgate, 2852, 2853, vol. 6.) The accompanying statement summarizes these great discriminations, showing the secret rates actually paid by, or at least available to, the Standard Oil Company on shipments from Olean via Rochester, the rates actually paid by Mr. Westgate from Titusville to the same points, and, in the case of certain of the points, the published and filed tariff rate from Olean from which the rates actually paid were a departure.

Comparison of secret rates from Olean via Rochester, published through rates from Olean, and rates paid by Westgate from Titusville, Pa., to points in northern New York.

Destination.	Secret rate from Olean via Rochester (i. e., 2.8 cents added to rate from Rochester).	Rate paid by Westgate from Titusville.	Rate in published and filed tariff from Olean.
Points on Adirondack division of New York Central R. R.	*Cents.*	*Cents.*	*Cents.*
Partlow and Beaver River	17.8	.....	.....
Saranac Lake	17.8	33	.....
Fulton Chain	22.8	33	.....
Clear Water			
Long Lake West			
Tupper Lake Junction			
Points on Rutland R. R.			
Malone	17.8	.....	26.5
Points on Rome, Watertown & Ogdensburg division of New York Central east of Oswego.			
Cape Vincent	15.3	26.5	26.5
Herman	15.3	26.5	.....
Morrisville	15.3	26.5	.....
Dexter	15.3	26.5	.....
Ogdensburg	15.3	26.5	26.5
Canton	15.3	26.5	.....
Dekalb Junction	15.3	26.5	.....
Antwerp	15.3	26.5	.....
Clayton	15.3	26.5	26.5
Watertown	15.3	.....	26.5
Points on Rome, Watertown & Ogdensburg division of New York Central west of Oswego.			
Wolcott	12.8	.....	21.5

That the Standard actually did make numerous shipments to the points covered by these special rate orders from Rochester, on which the rate of 2.8 cents had been paid between Olean and Rochester, is shown by Petitioner's Exhibit 626, which covers the shipments during the year 1904. These shipments include, for example, Carthage, Clayton, Cape Vincent, Lowville, Messena Springs, Ogdensburg, Watertown, and other points on the Rome, Watertown & Ogdensburg division, and Malone, Fulton Chain, Long Lake West, Saranac Lake, and other points on the Adirondack division.

This discrimination was continued in the face of repeated efforts on the part of independent refiners, particularly Mr. Westgate, of Titusville, to obtain lower rates into this northern New York territory. He repeatedly applied to the lines controlled by the New York Central—including the New York Central itself, the Lake Shore, and the Dunkirk, Allegheny Valley & Pittsburg, which is the initial line of this system on shipments from Titusville—to have the rate from Titusville to Boston, which was then 23½ cents, applied on shipments to Adirondack division points, urging that on traffic of other kinds generally the Boston rate was applied to that territory. (While there is no specific record in the testimony of an application from Mr. Westgate for Boston rates to Rome, Watertown & Ogdensburg points, it is obvious that, if the Boston rate of 23½ cents had at his request been applied to Adirondack division points, the New York Central would hardly have charged 26½ cents to the nearer points on the Rome, Watertown & Ogdensburg.) An account of Mr. Westgate's efforts to get these lower rates into this territory appears in his testimony (pp. 2858–2870, vol. 6) and in his correspondence with various officers of these railroads contained in Petitioner's Exhibits 809 and 810.

We call attention particularly to Exhibit 809. This is a letter from Mr. Goodman, assistant traffic manager of the New York Central Railroad, written to Mr. Westgate, under date of March 20, 1902, in response to his request that the Boston rate be applied from Titusville to points on the Mohawk & Malone road, which was then the designation of the present Adirondack division of the New York Central. Mr. Goodman stated in this letter that Boston rates on oil had never been applied or authorized to points on the Mohawk & Malone road; that this road had a very limited business, and could only pay its expenses and fixed charges by maintaining higher rates than on the main line. Finally, Mr. Goodman stated, in substance, that the Boston rate was not applied to this territory on oil from any points on the New York Central system, so that there was no discrimination against Titusville. His statement in this respect was as follows:

> It would not help you in the least if we should make Boston rates on oil, as our doing so would compel us to make a corresponding reduction in our local rates from

Utica and Rochester, which would involve a considerable loss to us in the way of revenue as the volume of business can not be increased. As long as we do not accept Boston rates from Cleveland, Warren, and other oil-shipping points to points on the Mohawk & Malone road you certainly ought not to feel aggrieved, and I hope you will advise me to that effect.

This statement of Mr. Goodman, that the New York Central did not accept Boston rates from other oil-shipping points, and that to apply these rates from Titusville would involve the necessity of reducing local rates from Rochester to Adirondack points, was not only untrue, but we claim that it is a proof of the secrecy of the rates which the New York Central was actually making for the benefit of the Standard Oil Company from Rochester. At the very time when this letter was written the New York Central was charging on the Standard's shipments from Rochester to Saranac Lake and Malone, leading points on the Adirondack division, 15 cents per 100 pounds, which was 1 cent less than the rate from Rochester to Boston. (Stipulation, defendants' testimony, 3663, vol. 17; Petitioner's Exhibit 1038.) To other Adirondack points the New York Central was charging from Rochester 20 cents, or only 4 cents more than the rate from Rochester to Boston, whereas Mr. Westgate had to pay 9½ cents more from Titusville to these points than the rate from Titusville to Boston.

Had the New York Central in good faith intended to treat the independent concerns on an equality with the Standard Oil Company, Mr. Goodman certainly should have informed Mr. Westgate of the rates that were being made for the Standard from Rochester. Indeed, had he done so, Mr. Westgate could have shipped at least to Saranac Lake and Malone at less than the rate of 33 cents, which he was actually paying, since the rate from Titusville to Rochester was about 14 cents (45 cents a barrel, Petitioner's Exhibit 609), which, added to the rate from Rochester to these destinations, would have given a total of about 29 cents. As we shall show later, the Boston rate was, after the investigation by the Bureau of Corporations, actually applied from Titusville and similar points to Adirondack points. The proper relation between the rates from Titusvllle and the rates from Rochester into this territory should have been at all times the same relation as between the rates from the two points,

respectively, to Boston. The rate from Titusville to Boston was 23½ cents, and from Rochester to Boston 16 cents, a difference of 7½ cents, and an independent refiner in western Pennsylvania should not have had to pay to Adirondack division points more than 7½ cents above the rate from Rochester to those points, which would have given 22½ and 27½ cents, respectively.

Not only in this particular correspondence with Mr. Goodman, but in all the other applications which, from time to time prior to 1906, Mr. Westgate made to the New York Central lines for lower rates into this territory, the railroads never informed him regarding the existence of the rates in the special rate orders from Rochester or Buffalo to Adirondack division points or Rome, Watertown and Ogdensburg points. (Westgate, 2861, 2871, vol. 6.)

The efforts of independent refiners, particularly Mr. Westgate, to get lower rates, not merely to points on the Rome, Watertown & Ogdensburg and Adirondack divisions but to other points in northern New York, will be further referred to after presenting the evidence regarding the secret rates enjoyed by the Standard Oil Company in Vermont, for the reason that these efforts related also to Vermont territory.

SECRET RATES IN VERMONT ON THE CENTRAL VERMONT RAILROAD.

We have already stated that the rates of $23, $28, and $30 per car, respectively, from Norwood, N. Y., to Burlington, Rutland, and Bellows Falls were rates of the Rutland Railroad. The court will have noticed, however, that two of the tariffs covering these rates were issued by the Central Vermont Railroad and one by the Ogdensburg & Lake Champlain. The line from Norwood to Alburg, Vt., formerly belonged to the Central Vermont, later was operated independently under the name of the Ogdensburg & Lake Champlain, and still later was transferred to the Rutland Railroad. Even after its transfer to the Rutland Railroad, the shipments from Norwood to Burlington did not all pass the entire distance over the lines of the Rutland, but part of the cars were diverted to the Central Vermont at Rouses Point or Alburg Junction, at the northern end of Lake Champlain. The Central Vermont was thus not only the origina-

tor, but continued to participate in these exceedingly low rates. Furthermore, the Central Vermont itself had numerous other secret, unfiled, and discriminatory rates, from Burlington to Vermont points, for the benefit of the Standard Oil Company, some of which were applied on interstate shipments and others on purely state shipments. Some of these secret rates were on carloads, and others on less than carloads. The papers authorizing these rates and correspondence between the officers of the Central Vermont and the Standard show clearly that they were intended to be used only on the Standard's shipments. These same rates in conjunction with the secret low rates from Olean, which we have already described, gave the Standard an enormous advantage over independent shippers in reaching practically the entire State of Vermont.

At least as far back as 1902 the Central Vermont had a number of very low carload rates on oil in tank cars, from Burlington to points on the Central Vermont. The institution of these carload rates and their use upon interstate shipments was arranged at the instance of the Standard Oil Company and for the benefit of the Standard Oil Company, as appears from the exhibits introduced in this case.

We call the court's attention particularly to the first authority for these tank-car rates from Burlington, which is Petitioner's Exhibit 660 A. (Pool, 2063, vol. 5.) This authority is designated on its face as a "Special order," and is in the form of a letter from the general freight agent to the local agent of the railroad company at Burlington and to the auditor. There is no pretense that this or the other later special orders and "special rate advices" covering these rates were ever filed with the Interstate Commerce Commission. At the head of the letter, as a subject, appear the words "Oil, tank cars, account of Standard Oil Company, ex Olean, N. Y., via Norwood and Rouses Point to Burlington," referring, of course, to cars coming from Olean on the rate combination we have already described. The letter continues:

> "Inasmuch as this traffic is to travel from Olean to Burlington via Rouses Point and our line, I have arranged the following rates for reforwarding tank cars: Burlington to Essex Junction $10 per car, Enosburg Falls $35 per car, Bethel $45 per car.

"It is to be understood that the Standard Oil people will notify us in advance and enable us if it is possible to stop the Enosburg Falls cars off at St. Albans, returning it from this point, the through bill going into Burlington, you to make out a bill of $35 from Burlington. On the cars for Essex Junction the S. O. Co. to notify us in advance to enable us to stop the car at Essex Junction, the through bill going into Burlington, you to make a bill from Burlington to Essex at $10. On the cars for Bethel, we to be notified and forward direct, through bill going to Burlington, you making bill from Burlington to Bethel at $45.

A consideration of this order and of the location of the several points will show that the meaning of this letter is that the cars destined to these three points, Enosburg Falls, Essex Junction, and Bethel, were not actually to go to Burlington at all, although they were to pay, in addition to the rate from the point of origin to Burlington, a rate from Burlington to destination. As a matter of fact, these cars were stopped on their route before reaching Burlington, and were continued, without breaking bulk, to another destination on a pretended state rate, the shipments, however, being clearly through interstate shipments.

The number of points to which this scheme was applied was afterwards considerably increased, as shown by the later special orders and rate advices (Petitioner's Exhibits 660 C, 660 I, and 660 J), until it finally included the following points scattered almost from one end of the State to the other: St. Albans, Enosburg Falls, Essex Junction, Richmond, Barre, Montpelier, Bethel, White River Junction, and Alburg. The rates ranged from $10 to $45 per tank car, regardless of weight.

The next in date of these rate orders naming these rates, issued February 1, 1903, like the first, was by its terms confined to Standard Oil Company shipments. (Petitioner's Exhibit 660 C.) It bore at the top the words "Handling S. O. Co. shipments from Burlington in tank cars." Mr. Ferguson, chief clerk of the general freight department of the Central Vermont, testified at first that he believed that, although this particular order contained this language, there was at the same time what was known as a "Special rate advice" containing the same rates, which would not have restricted them to the Standard. When, however, his atten-

tion was called to Petitioner's Exhibit 660 F, dated March 12, 1904, being a letter from the general freight agent canceling this special order of 1903 and containing these words, "These rates will in future be covered by special rate advice," he admitted that this would seem to indicate that there was no special rate advice of this character up to March, 1904. (Ferguson, p. 2370, vol. 15.)

The special rate advice then issued, which is referred to in the last-mentioned letter, is Petitioner's Exhibit 660 H. This document is headed as follows:

SPECIAL RATE ADVICE.

The following special rate is authorized on
Petroleum Oil in C. L. and L. C. L.
Account of Standard Oil Company.

We believe that this language "Account of Standard Oil Company" indicates clearly that the rates were intended only for the benefit of the Standard Oil Company. Mr. Ferguson, however, testified (pp. 2364–66, vol. 15) that it was quite common for the Central Vermont to issue special rate advices with the language "account of" some particular shipper, and he introduced a number of such advices on commodities other than oil containing that language. (Defendants' Exhibits 203–206.) He stated that the words "account of" meant simply that the shipper in question was the one who originally took up the matter with the railroad, "and for them we arranged that rate;" that the principal purpose was to enable the railroad to keep track of the rates when from time to time the question of reissuing them arose; that this language was no indication of secrecy, and that if any other shipper wanted to use such a rate the railroad would give it to him.

Whether this testimony be correct with respect to other special rate advices of the Central Vermont containing such language or not, we believe that the language on these particular advices, "Account of Standard Oil Company," should be interpreted in connection with the language on the two earlier orders, which specifically confined the rates to the Standard Oil Company.

As a further evidence that these carload rates continued to be secret rates, intended only for the benefit of the Stand-

ard Oil Company, after the change in the form of the documents authorizing them, we point to the correspondence which took place in 1905 between Mr. Westgate, an independent refiner of Titusville, Pa., and the Central Vermont Railroad. Mr. Westgate wrote (Petitioner's Exhibit 1036), under date of May 26, 1905, asking particularly for carload and less than carload rates from Rouses Point, N. Y., and White River Junction, Vt., but added the general question whether the Central Vermont Railroad applied second-class rates on less than carloads and third-class rates on carloads. Mr. Dalrymple, the general freight agent of the Central Vermont, replied (Petitioner's Exhibit 808 A), inclosing rate sheets showing class rates from Rouses Point and White River Junction, and stating further: "On petroleum oil we apply over our line on less carloads second, and carloads third, class." The third-class rates are very much higher than the special tank-car rates from Burlington, on which the Standard made shipments, and the second-class rates much higher than the less than carload rates used by the Standard from Burlington (hereafter described); but Mr. Dalrymple made no reference to these lower rates, and his statement was clearly intended to imply that on oil shipments between all points on the Central Vermont second and third class rates, respectively, were used.

We also call attention to Petitioner's Exhibit 805, being a letter from Mr. W. H. Smith, division freight agent of the Lake Shore & Michigan Southern Railroad, to Mr. Westgate, dated May 1, 1906. Mr. Westgate had evidently requested from the Lake Shore, as the initial line from Titusville, information regarding the rates from Burlington, Vt., to points on the Central Vermont Railroad. Mr. Smith wrote: "Attached hereto you will find a copy of the Central Vermont Railway tariff naming rates from Burlington to points on their lines. They advise they apply second class on less carloads and third class on carloads." Inclosed with this letter was a list of class rates from Burlington to points on the Central Vermont Railroad, on a printed form evidently emanating from the Central Vermont itself. Here again it is obvious that the Central Vermont must have failed to inform the Lake Shore of the existence

of its tank-car rates from Burlington, which were very much less than the third-class rates.

It may be presumed that the arrangement provided for in 1902 (Petitioner's Exhibit 660 A) for the diversion of cars consigned to Burlington to other points without going into Burlington, and the application thereon of tank-car rates from Burlington was extended to cover shipments to all of the more numerous points to which such tank-car rates were later put into effect.

These tank-car rates from Burlington were similarly used on interstate shipments coming from New London, Conn. The rate on oil from New London to Burlington was 12 cents per 100 pounds. (Pool, 2066, 2067, vol. 5.) This rate was used in conjunction with these secret state tank-car rates from Burlington, especially to Bethel and Montpelier, points south of Burlington, the cars being stopped off en route. The total charge thus made was less than the through rate from New London to these destinations. The correspondence between the traffic manager of the Standard Oil Company and the Central Vermont Railroad by which this arrangement was made was introduced in evidence by the Government. (Petitioner's Exhibits 662 A to I.) The first proposition for the use of this illegal combination was made by H. E. Felton, traffic manager of the Standard Oil Company, in a letter of March 17, 1904, which contained the following language:

> We are figuring on having for a time shipments to Bethel and Montpelier, Vt., from New London, Conn. These shipments of course will be routed via the Central of Vermont. As you know, the combination rates via Burlington to these two points are lower than the through rates, and we wish to know if this combination rate will be applied if we consign the shipments through to destination. If not, it will be necessary for us to consign to the S. O. Co., Burlington, Vt., with instructions to reconsign. This will give you an unnecessary double haul.

In compliance with this request the railroad company authorized its agents to apply the special rates then in existence from Burlington on shipments coming from New London, and to have the cars go directly to the final destination without going to Burlington at all. (Petitioner's Exhibits

663A and 663B.) The arrangement was not restricted to Bethel and Montpelier.

Here, again, a state rate, not filed with the Interstate Commerce Commission, was, at the request of the Standard Oil Company, applied on interstate shipments to make up a total rate less than the published through rate, as specifically stated in Mr. Felton's letter above quoted.

Mr. Felton attempted to defend this practice on the ground that the Standard had a legal right to ship on the published rate from New London, Conn., to Burlington, and then to reconsign the cars to points in the State of Vermont, using unfiled state rates, this reconsignment making the shipment purely a state shipment. He said that since no court could complain of such a transaction he could see no objection to the plan actually pursued, which was a convenience and economy both to the shipper and to the railroad company. We do not believe, however, that, even had such reconsignment from Burlington actually been made, the shipments could be considered as state shipments, but, on the contrary, we believe that any such practice, designed to have and having the effect of bringing about a departure from the published through rates, would be an illegal device, coming under the prohibitions of the Interstate Commerce Act. As a matter of fact, however, the shipments were not reconsigned, but were through interstate shipments from New London to the points of final destination.

The only defense which can be made regarding them is the same defense which has been made as to the use of unfiled state rates on interstate shipments generally, namely, that it was a common practice of the railroads before 1906 and was not considered by them unlawful. Two of the witnesses for the defendants, Pierpont and Shubert, testified, on the basis of this practice, that, at the time the shipments in question were made, they would have quoted the combination of the rates from New London to Burlington and from Burlington to Bethel and Montpelier as the legal through rate. These witnesses admitted, however, that, in making this answer, they were assuming that the rates from Burlington were open rates, available to any shipper, whereas, as we have shown, they were secret rates. It is the secrecy of these rates which were used on interstate commerce, rather

than the mere fact that they were unfiled rates, which we consider important in the present case.

These tank-car rates, professedly made for the benefit of the Standard Oil Company, were much lower than the rates which the Central Vermont Railroad was holding out to the public as its rates on oil in the State of Vermont. This railroad company in its published tariffs specifically stated that its rates on oil in carloads would be third-class rates (Schindler, 1734, vol. 4); Mr. Ferguson stated that third-class rates were the "regular rates" (2377, vol. 15), and we have already noted the letters written by the general freight agent to the same effect.

The table in the petition (vol. A, p. 82), the accuracy of which is testified to by Mr. Schindler (p. 1734, vol. 4), compares these tank-car rates with the third-class rates from Burlington to the several destinations. The tank-car rates have been reduced to the basis of cents per 100 pounds, on the assumption of an average weight of 60,000 pounds per car. We have already shown that the average weight of all cars shipped from Olean to Burlington for five years was 57,000 pounds, and the average weight of cars shipped during 1903 and 1904, taken together, over 67,000 pounds. This table shows that the rates paid by the Standard Oil Company from Burlington to these destinations were from one-half to less than one-quarter of the third-class or published rates. For instance, the third-class rate from Burlington to Barre was 16 cents; the rate paid by the Standard amounted to 6 cents.

In addition to these tank-car rates to points on its own line, the Central Vermont Railroad made special carload rates, as well as less than carload rates, from Burlington to points in Vermont on the St. Johnsbury & Lake Champlain Railroad, and also on the Montpelier & White River Railroad. The special orders authorizing these rates likewise indicate that they were issued "Account of Standard Oil Company." (Petitioner's Exhibit 660 D.) They were not filed with the Interstate Commerce Commission.

By the use of these secret state rates from Burlington on oil in tank cars, and also the state rates from Burlington to points on the St. Johnsbury & Lake Champlain Railroad, in conjunction with the secret rates which we have already

described from Olean to Burlington, the Standard Oil Company was able to reach these destinations at a very much lower charge than the published through rates which were paid by competitors from refining points close to Olean. Mr. Westgate, of Titusville, testified to numerous shipments which he had made from 1900 to 1904, some to these same points and others to points in the immediate vicinity in Vermont. (Vol. 6, 2847–2851.)

The following table compares the rates paid by the Standard Oil Company from Olean with the rates paid by Mr. Westgate from Titusville. The rates paid by the Standard are based on a rate of 15.8 cents from Olean to Burlington, plus the rates from Burlington on the basis of a weight of 60,000 pounds per tank car. These rates from Burlington, so far as appears from the evidence, were first made in 1902 and 1903, while some of Mr. Westgate's shipments were prior to that time and others—to most of the points—subsequent.

	Carload rate from Olean based on rate to Burlington, Vt. *Standard Oil Co.*	Carload rate paid by Westgate from Titusville. *Independents.*
Points on Central Vermont R. R.	*Cents.*	*Cents.*
Burlington	[a] 15.8	33
Alburg	[a] 21.8	.....
Barre	[a] 21.8	.....
Bethel	[a] 23.3	.....
Essex Junction	[a] 17.5	.....
Enosburg Falls	[a] 21.6	38, 40½, 43
Montpelier	[a] 21.8	.....
Rushford	[a] 20.8	.....
St. Albans	[a] 20.8	.....
White River Junction	[a] 20.8	.....
Points on St. Johnsbury & Lake Champlain R. R.		
Highgate	27.8	33
Sheldon, Morrisville (and several other points)	26.3	33
Hardwick	27.8	.....
Walden	29.8	.....
Danville (and several other points)	30.8	.....
St. Johnsbury	31.8	33, 40½
North Concord, et al	33.8	.....
Derby Line	.....	33, 40½
Newport	.....	33, 40½

[a] Based on tank-car rates from Burlington, computed per 100 pounds on basis of cars containing 60,000 pounds.

All of Westgate's shipments to points in Vermont bore rates from 33 to 43 cents, which were third-class rates, whereas the Standard Oil Company could reach the same and other neighboring points at from 15.8 cents to 33.8 cents, and the points on the Central Vermont itself at 23.3 cents or less. (Westgate, 2847–2851, vol. 6.) This table shows, for example, that while the Standard Oil Company could ship from Olean to Enosburg Falls for 21.6 cents per 100 pounds, Mr. Westgate paid at various times from 38 to 43 cents. To Sheldon, on the St. Johnsbury & Lake Champlain, the rate from Olean was 26.3 cents; Mr. Westgate made shipments at 33 cents.

Mr. Felton, of the Standard Oil Company, testified that the rates paid by Mr. Westgate to the points above mentioned were in some cases less than the legal rates which he should have paid by the route over which his shipments actually moved, and, in other cases, that there were, by other routes, lower rates than he paid. He states (Defendant's Exhibit 178) that, by the route used, the correct rate to Enosburg Falls was 51 cents at the time of one shipment, and 47½ cents at the time of another; the correct rate to Highgate 39½ cents, to St. Johnsbury 35½ cents (at least part of the time), to Derby Line from 32½ to 39½ cents at various times, and to Newport 38½ to 39½ cents. In practically all these cases it will be seen that, according to Mr. Felton's contention, the rate that should have been paid via the route used was higher than the rate actually paid, so that the discrimination in favor of the Standard Oil Company by reason of the rates from Olean was even greater than shown in the above table. While to Newport, St. Johnsbury, and Derby Line Mr. Felton says that a rate of 32½ cents—a little less than Mr. Westgate actually paid—was available by another route, his exhibit shows that this rate, in each case, was based on a complicated combination of local rates which would not be at all likely to come to the knowledge of a shipper in Pennsylvania.

With reference to the rates paid by Mr. Westgate which Mr. Felton contends were less than the proper rates, it may be stated that these were all third-class rates. Under the Official Classification, oil in less than carloads is third class in the absence of special exceptions by individual railroads. To territory in northern New York on the New York Central

and New York & Ottawa third-class rates were legally applicable on oil in less than carloads, and consequently also on oil in carloads. To Rutland Railroad points third-class rates were applicable on oil in carloads. If there was no authority for the application of third-class rates, even on carloads, to the particular points on the Central Vermont and St. Johnsbury & Lake Champlain referred to by Mr. Felton, it was, at most, a very natural oversight of the local agent at Titusville to apply third-class rates.

Not only did the Standard Oil Company have these special secret rates on carload shipments from Burlington, but it also had for years special low less-than-carload rates from Burlington to almost all points in Vermont. These special rates were not filed with the Interstate Commerce Commission. In numerous cases the Standard Oil Company could ship oil from Olean to Burlington in carloads, and from Burlington to destination in less than carloads, at a total charge less than the through carload rate from competing refining points in northwestern Pennsylvania.

The first record of these special rates on less than carload shipments introduced by the Government is Petitioner's Exhibit 664, which dates back as far as May 11, 1896. (Pool, pp. 2069, 2070, vol. 5.) This shows rates ranging from 16 to 68 cents per barrel, and in most cases about 40 cents per barrel, or less. A barrel weighs 400 pounds, so that the rates were equivalent per 100 pounds to from 4 to 17 cents, and in most cases did not exceed 10 cents per 100 pounds. These rates were very much less than the second-class rates, which, according to the published tariffs of the Central Vermont Railroad, would apply on less than carload shipments of oil.

A later document, naming similarly low rates from Burlington to a large number of points on the Central Vermont (expressed, however, in cents per 100 pounds), is Petitioner's Exhibit 666, dated January 1, 1903, the rates in which were in use at least as late as December, 1904, as is shown by their appearance in a bill rendered to the Standard Oil Company for that month. (Petitioner's Exhibit 667.)

The petition also presents (vol. A, p. 81) a comparison of the secret less-than-carload rates from Burlington to points on the Central Vermont Railroad with the second-class rates, which were the regular rates on this road on petroleum in less than

carloads, the accuracy of which is testified to by Mr. Shindler (vol. 4, pp. 1733–4), and was also admitted by Mr. Ferguson (p. 2371, vol. 15), and as stated by officers of the Central Vermont in letters to independent shippers. (Petitioner's Exhibits 805, 806, 808.) This table shows that the secret rates paid by the Standard Oil Company were in most cases from 20 per cent to 50 per cent less than the second-class rates, and in two cases (to White River Junction and Winslow, Vt.) were less than one-quarter of those rates. These less-than-carload rates were, in fact, less in most cases than the third-class rates, the regular basis on oil in carloads. Indeed, some of them were as low as fifth-class rates. (Compare table in petition, vol. A, p. 81, with class rates shown in Petitioner's Exhibits 805 and 665.) Note also Petitioner's Exhibit 665, which is a memorandum, undated, found in the files of the Central Vermont, and comparing the less-than-carload rates then in effect on oil (many of which were lower than those of January 1, 1903) with the second, third, and fifth class rates at that time in effect. (Pool, p. 2070, vol. 5.)

As an illustration of the manner in which the Standard Oil Company could use these special secret less-than-carload rates in competition with competitors, we would call attention to Jonesville, Vt., as a point to which Mr. Westgate, an independent refiner, actually made shipments. On carload shipments to Jonesville Mr. Westgate paid 45 cents per 100 pounds, viz, 33 cents from Titusville to Burlington and 12 cents from Burlington to Jonesville. The less-than-carload rate of the Standard Oil Company from Burlington was the same as the carload rate (third class) paid by Westgate, 12 cents, and by taking advantage of the secret carload rate of 15.8 cents from Olean, N. Y., to Burlington, the Standard could reach Jonesville with less-than-carload shipments for 27.8 cents, as compared with 45 cents paid by Mr. Westgate on carloads. There were, in fact, many points on the Central Vermont which the Standard could thus reach on less-than-carload shipments at rates less than the through carload rates from refineries near Olean, which were justly entitled to the same rates as Olean.

That the Central Vermont Railroad took particular pains to keep these less-than-carload rates from Burlington secret

is shown by the method of billing and collecting charges. Mr. Pool testified that he examined waybills of all shipments of the Standard Oil Company from Burlington during the month of December, 1904, and that the waybills of the less-than-carload shipments to points on the Central Vermont Railroad showed the second-class rate, which is the regular published rate of the railroad on less-than-carload shipments. (Pool, 2072, vol. 5.) He also produced a copy of the bill rendered to the Standard Oil Company for actual charges on these shipments for the month of December. This bill was rendered by the general auditor of the railroad company, the freight charges not being collected by the local agent at Burlington. This bill, which is Petitioner's Exhibit 677, shows on its face, in the column farthest to the right (headed "Division of charges," though this is not its content), the charges entered in the original waybills, which charges are in the case of the less-than-carload shipments at second-class rates and higher than the actual charges, which are shown in the preceding column. In other words, the class rates were falsely entered in the waybills of these less-than-carload shipments, and the actual lower rates were collected in a secret manner through the office of the general auditor.

This method of handling shipments, it will be recalled, is substantially similar to the method employed by the Chicago & Eastern Illinois Railroad and the Chicago & Alton Railroad in connection with the secret rates to Evansville and East St. Louis, respectively, where false rates were entered in the waybills and the actual charges collected through the auditor's office. It may be noted that, while the defendants called Mr. Ferguson, of the Central Vermont, who sought to show that the carload rates from Burlington, marked "Account of Standard Oil Co.," were not necessarily secret rates, they asked not a single question as to these less-than carload rates, and in fact offered no testimony to defend them. By reason of the breaking of bulk at Burlington, the shipments under these rates were intrastate, but that makes the rates none the less discriminatory.

We maintain that the undisputed secrecy of these less-than-carload rates goes to sustain the other evidence of the secrecy of the unfiled carload rates from Burlington, and

even of the filed rates from Norwood. A careful examination of all the "special rate advices," correspondence, and other documents introduced in evidence by the Government with reference to the rates of the Central Vermont Railroad generally, which will be found in Petitioner's Exhibits 660 to 667, inclusive, will show clearly the general policy of that railroad company to discriminate in favor of the Standard Oil Company. When it is recalled that this railroad held out to the public that its rates on petroleum were third class in carloads, and second class in less than carloads, a rate basis materially higher than that prevailing on most other railroads using the Official Classification, the importance of these special carload and less-than-carload rates, which were far lower than the second and third class rates, will be evident.

That the Central Vermont recognized that its previous rates had been discriminatory is evident from the fact that after the investigation of the Bureau of Corporations it resumed prorating with the western railroads on oil, and that on local shipments over its own system it established fifth-class rates in general for oil in carloads and third-class rates for oil in less than carloads—a very much lower rate basis than that which it had previously held out in its published tariffs. (Ferguson, vol. 15, p. 2378.)

UNSUCCESSFUL EFFORTS OF INDEPENDENT REFINERS TO OBTAIN REASONABLE RATES TO NORTHERN NEW YORK, VERMONT, AND CANADIAN POINTS.

We have thus shown clearly that the rates from independent points to northern New York and Vermont were higher than the rates paid by the Standard Oil Company, shipping from Olean, and have pointed to part of the evidence as to the secrecy of the rates used by the Standard in this territory. This marked discrimination was not due to any failure on the part of the independent refiners to seek a more favorable rate basis. Mr. Westgate, an independent refiner of Titusville, who does business in this territory, testifies in detail to the long-continued and strenuous endeavors which he made, by correspondence and personal solicitation with officers of all of the railroads concerned, to secure more reasonable rates

into this territory (vol. 6, pp. 2858–2878). These efforts and their failure are not only evidence of intent on the part of the railroads to discriminate against the independent refiners, but they also bear on the secrecy of the rates given to the Standard Oil Company. For in none of the numerous interviews and correspondence with the officers of the various lines did they inform Mr. Westgate of the rates used by the Standard on shipments in the same territory.

Mr. Westgate's request to the railroads with respect to the rates from Titusville into this territory was usually in the form of a request that they apply the same rate to points in northern New York, Vermont, and the neighboring parts of Canada as applied from Titusville to Boston. On classified commodities, and in fact on traffic generally, the rates from western Pennsylvania and other western points to most points in this territory were the same as the Boston rates, indeed, as we shall show more fully later, the rates from such western points to the larger part of New England on commodities other than oil have for many years been the Boston rates. As we shall show also, the railroads in New England generally, with the exception of a very limited territory, did not until 1906 on oil apply the Boston rate to the territory to which Boston rates on other commodities applied. In other words, the New England lines in general refused to prorate on oil, and charged "arbitraries" or local rates, above the Boston rate. This was true with respect to the Central Vermont and Rutland railroads, among others. To points in northern New York on the New York Central lines, where there was no question of a joint rate between different railroads, the New York Central also failed, up to 1905, to apply Boston rates on oil shipments from independent refining points of western Pennsylvania.

The efforts which Mr. Westgate made to secure the application of the Boston rate into this territory may be divided into the following heads:

1. To Central Vermont and Rutland Railroad points.

2. To points on the New York Central in New York, including the Rome, Watertown & Ogdensburg and Adirondack divisions, the evidence regarding which has already been presented in part.

3. To points on the New York & Ottawa in northern New York.

4. To Canadian points.

In many of the interviews and letters in which Mr. Westgate took up this subject his request for Boston rates from Titusville covered all of these groups of destinations collectively.

1. Taking up Mr. Westgate's efforts with regard to rates to points on the Rutland and Central Vermont railroads, we have already called attention to some of the correspondence which he had on the subject and to the evidence which it constitutes of the intent of the Central Vermont Railroad to keep secret its unfiled rates on oil from Burlington. It will be recalled that the general freight agent of the Central Vermont wrote Mr. Westgate in 1905 that that road applied second-class rates on oil in less than carloads and third-class rates on oil in carloads, this statement being made at the very time that very much lower rates were charged to the Standard on shipments from Burlington. Other efforts which Mr. Westgate made to secure a more favorable rate basis to points on the Rutland and Central Vermont roads likewise bear on the secrecy of these rates out from Burlington, and further indicate that even the rates which we have described from Norwood to Burlington, Rutland, and Bellows Falls, although filed with the Interstate Commerce Commission, were virtually secret rates, not intended to come to the knowledge of shippers generally.

As already stated, the Central Vermont formerly operated the line from Norwood to Burlington, and it was this road which, at least as far back as 1893, made the very low rate of $23 per tank car between these points, which, in conjunction with the rates from Olean to Rochester and from Rochester to Norwood, gave a very low total through rate from Olean to Vermont points—about half the through rate from Titusville to Burlington. Similar low rates had in fact been in effect for years before 1893 (Matthews, vol. 16, p. 2625). Mr. Westgate testifies (vol. 6, pp. 2863–2864) that about 1893 he had a conversation with Mr. Chittenden, the very officer of the Central Vermont who signed this $23 per car tariff from Norwood, asking him if he

could not make prorating arrangements with connecting lines by which shipments could be made from Titusville to Vermont points on the Central Vermont Railroad at the same rates as prevailed from Titusville to Boston, and that Mr. Chittenden said he could not. Mr. Westgate then asked him if he could not make lower local or arbitrary rates from junction points of the Central Vermont with other lines which would result in a more favorable total rate, but Mr. Chittenden said that he could not make any other than the existing rates, third class in carloads and second class in less than carloads, and that the railroad company could make more money in that way than otherwise. Mr. Chittenden told Mr. Westgate nothing about the possibility of getting into Vermont by means of the existing low rates from Norwood. It appears, therefore, that, although these tank-car rates from Norwood were filed with the Interstate Commerce Commission, it was not the intention of the railroad company that they should become known to shippers other than the Standard Oil Company.

Again, we call attention to Petitioner's Exhibit 806, a letter dated August 21, 1900, from J. E. Dalrymple, general freight agent of the Central Vermont Railroad, to Mr. Westgate's agent at Malone, N. Y. This quotes second and third class rates (Ferguson, p. 2376, vol. 15) as the less-than-carload and carload rates on oil from Rouses Point and White River Junction to points in Vermont. The rates quoted from Rouses Point, which is much nearer to Vermont points than Norwood is, are several times as high as the rates which the Standard was paying from Norwood to points in the same territory; and also far higher than the rates for corresponding distances covered by the special tariffs from Burlington which the Standard was using. The writer, however, gave this independent refiner no suggestion that there existed any other and more favorable rates of which he could make use.

Mr. Westgate also testified (vol. 6, p. 2871) to a conversation which he had with Mr. Cassidy, general freight agent of the Rutland Railroad, subsequent to the time when this company had taken over from the Central Vermont the line from Norwood to Rouses Point, and also subsequent to the

time when the Rutland had passed under the control of the New York Central. He asked Mr. Cassidy if oil rates from Titusville to all points on the Rutland Railroad could not be put on the Boston basis; that is, made the same as from Titusville to Boston, which was the practice with commodities other than oil. Mr. Cassidy simply told him that he would have to refer the matter to the New York Central Railroad, and Mr. Westgate never received any further reply from him. Mr. Cassidy did not call his attention at all to the existing low rates from Norwood, which would have given him a more favorable total rate into Vermont, and the discovery of which might also have led to his discovery of the secret rates up to Norwood.

Mr. Westgate also repeatedly took up the matter of making the Boston rate from Titusville to points in Vermont with the officers of the New York Central system, which controlled the initial line from Titusville, namely, the Dunkirk, Allegheny Valley & Pittsburgh, over which he made most of his shipments. He addressed applications and letters to the offices of the Dunkirk, Allegheny Valley & Pittsburgh itself, to the officers of the Lake Shore road, which is controlled by the New York Central, and over which his shipments passed for part of the distance, and to the officers of the New York Central Railroad itself. (Vol. 6, p. 2858.) These requests, in many cases, related not only to the application of Boston rates to points on the Rutland Railroad in Vermont and northern New York, but also to points on other lines in that vicinity.

With reference to rates to points on the Rutland Railroad, Mr. Westgate was several times told by these officers of the several lines of the New York Central system that the Rutland would not join in through rates on oil at the Boston basis, but insisted on charging its arbitraries. They failed to call his attention to the existence of the rate of 9 cents per 100 pounds from Rochester to Norwood, which might have given him a clue to the rate combination actually used by the Standard Oil Company and have enabled him also to make a combination much more favorable than the rate which he actually paid. (Vol. 6, p. 2862.) Whether or not the New York Central knew definitely what the rates filed

by the Rutland Railroad from Norwood to Vermont were, it must have known that they were not the high third-class rates, on the basis of which through shipments were being made from Titusville.

Furthermore, the New York Central assumed control of the Rutland Railroad late in 1904 or early in 1905. (Kallman, vol. 15, p. 2289; according to Moody's Manual, the acquisition of the stock of the Rutland by the New York Central took place January 4, 1905.) At this very time correspondence was taking place between Mr. Westgate and Mr. La Bau, assistant traffic manager of the New York Central, with reference to the application of Boston rates to points on the Rutland Railroad. Mr. La Bau, on January 30, 1905 (Petitioner's Exhibit, 810 I), referring to Mr. Westgate's requests with respect to rates into this entire northern New York and Vermont territory, stated that the situation was very complicated and would take some time to work out, and that he must refer Mr. Westgate to the Lake Shore, as representing the initial line from Titusville, as to what action was taken. Surely at this time, at any rate, Mr. La Bau must have known of the low tank-car rates over the Rutland from Norwood to points in Vermont; yet he failed to inform Mr. Westgate of their existence or of the existence of the New York Central's 9-cent rate from Rochester, which was used in combination with them. In fact, notwithstanding the control of the Rutland by the New York Central, it was the latter part of 1906 before the Boston rate was made to apply from independent refining points of western Pennsylvania and Ohio to points on the Rutland Railroad (Kallman, vol 15, p. 2313), this change taking place subsequent to the report of the Bureau of Corporations criticising the policy of the New England lines in failing to prorate on oil. A full account of Mr. Westgate's efforts to get this rate basis to Rutland Railroad points through the New York Central and its subsidiary lines appears in his testimony (vol. 6, pp. 2858–2872) and in the correspondence. (Petitioner's Exhibits, 804 and 810.)

2. We have already referred to Mr. Westgate's efforts to secure the application of Boston rates to points on the Rome, Watertown & Ogdensburg and Adirondack divisions of the

New York Central, and have shown that the officers of the New York Central and affiliated lines failed to inform him of the existence of the low rates from Rochester into this territory. After long delay, however, Mr. Westgate's efforts in this direction were successful, and about March 15, 1905, the Boston rates were applied to points on the Adirondack division and to the more distant points on the Rome, Watertown & Ogdensburg division, while still lower rates were applied to nearer points on the latter division. (See Defendants' Exhibit 197.)

Mr. Kallman seeks to explain the inequality and injustice of the previous rates into this territory on the ground that they were the result of historical conditions and that there had been no systematic attempt until about 1904 to establish a uniform rate basis on oil to points on the New York Central lines. He says, moreover, that so far as his investigations in 1904 showed, the subject-matter of the inequality of rates into that territory had not previously been much agitated. (Vol. 15, p. 2290.) The testimony of Mr. Westgate, however, indicates that the matter had been repeatedly agitated for years previously (Westgate, vol. 6, p. 2858), and we believe that the only possible explanation of the wide difference between the rates charged to independent refiners and the rates charged to the Standard on shipments from Rochester and Buffalo into this territory was the intention of the New York Central system to discriminate in favor of the Standard.

3. Still a further request which Mr. Westgate repeatedly made to the New York Central lines, as appears from the testimony and exhibits already cited, was for the application of Boston rates to points on the New York and Ottawa, a line running through the Adirondack territory and to Ottawa, Canada. This was one of the subjects which Mr. Westgate took up with Mr. Wheeler, of the Lake Shore, and Mr. La Bau, assistant traffic manager of the New York Central, during the latter part of 1904. On November 22, 1904 (Petitioner's Exhibit 810 D), Mr. La Bau wrote Mr. Westgate that the only method of access which the New York Central had to Ottawa and Cornwall, Ontario, was over the New York & Ottawa road, "which is entirely an independent line and charges very high arbitrary rates." In other words,

he practically put the blame for the failure to apply Boston rates to points on the New York & Ottawa upon that railroad. That such was not the case, but that the New York Central itself was unwilling to make this rate basis, appears from correspondence between Mr. Westgate and the assistant general freight agent of the New York & Ottawa which had taken place in 1902. (Petitioner's Exhibit 811.) In this correspondence the New York & Ottawa stated that they were perfectly satisfied with the percentage allowed them out of the 23½-cent rate, namely, the Boston rate, but that the New York & Ottawa was powerless to name the rates from the initial points. Mr. Kallman, to whom the question of rates into this territory was referred by Mr. La Bau during 1904 and 1905, said in his testimony in the present case that he was not aware of this attitude on the part of the New York & Ottawa, but it is obvious that the New York Central could readily have ascertained that attitude and could then, if it so desired, put in the Boston rate to points on that line.

Moreover, at the very time when Mr. La Bau claimed that the New York & Ottawa charged very high arbitraries, the New York Central had a joint through tariff with the New York & Ottawa from Buffalo to Cornwall and Ottawa of 24 cents per 100 pounds, only 5½ cents more than the rate from Buffalo to Boston; whereas Mr. Westgate was paying from Titusville to these points 9½ cents more than the rate from Titusville to Boston. (See Petitioner's Exhibits 1038 and 846.)

As showing further the policy of the New York Central, it may be noted that, although the New York & Ottawa came under the control of the New York Central in the latter part of 1904 or the early part of 1905 (Kallman, vol. 15, p. 2314), it was nearly two years before it applied the Boston rate to points on that line from independent refining points of western Pennsylvania and Ohio. (Ibid., 2316.) This change, again, was made subsequent to the report of the Bureau of Corporations in which the high rate basis into this territory on oil was criticised.

The change which took place in the rates from independent refining points to northern New York and Vermont, partly

in 1905 but mainly in 1906, after the report of the Bureau of Corporations, reduced enormously the cost of transportation, and did away with the unreasonable discrimination which had previously existed in favor of the Standard Oil Company. The Boston rate basis of 23½ cents (later reduced to 19 cents) was put in effect from western Pennsylvania points to the majority of points on the New York & Ottawa Railroad in the United States (some taking an arbitrary additional of 3 cents per 100 pounds, Westgate, vol. 6, p. 2856), to all points on the Rutland Railroad, both in New York and Vermont, to other points in northern Vermont, with a few exceptions where certain additional charges were made, to the Adirondack division of the New York Central in the State of New York, and to the more distant territory on the Rome, Watertown & Ogdensburg division of the New York Central. (Westgate, vol. 6, p. 2856.) To all this territory Mr. Westgate had previously been paying from 26½ cents to more than 40 cents, in most cases paying 33 cents or more. (Westgate, vol. 6, pp. 2847–2855.) The following statement shows the rates which Mr. Westgate actually paid to numerous points in this territory from time to time prior to 1905, the rates which Mr. Felton, of the Standard Oil Company, claims should have been paid to the same points by the route actually shipped (usually higher, but sometimes lower than the rate actually paid), and, in some cases, the rate which Mr. Felton claims was available for shipments via some other route. These rates, all of which are exceedingly high, contrast strikingly with the rates shown in the last column, which were put in effect in 1905 and 1906.

[Rates expressed in cents per 100 pounds.]

Date of shipment.	Destination.	Rate actually charged.	Correct rate via route over which shipment moved as figured by defendant.	Rate claimed by defendants to have been available.	Published tariff rate, effective January 2, 1907, after prorating was resumed.a
Nov. 11, 1902	Altona, N. Y.	33	48.5	.....	19
Dec. 10, 1900	Brandon, Vt.	39.4	43	.....	22.5
Dec. 11, 1900	Chester, Vt.	39.4	43	37.5	19
Aug. 16, 1901	.....do.....	33	43	37.5	19
Apr. 10, 1902	.....do.....	33	41	35.5	19
Aug. 19, 1901	Ellenburgh Depot, N. Y.	33	40.5	.....	19
Oct. 12, 1902	.....do.....	33	46.5	.....	19
Nov. 20, 1900	Ludlow, Vt.	39.4	43	.....	19
Mar. 18, 1901	.....do.....	33	43	42.5	19
Jan. 2, 1903	.....do.....	33	40.5	.....	19
Mar. 30, 1903	.....do.....	33	41	40.5	19
Jan. 10, 1901	Rouses Point, N. Y.	33	45.5	.....	19
Oct. 13, 1900	Sheldon, Vt.	40.5	38.5	.....	22.5
Oct. 12, 1901	.....do.....	40.5	31.5	.....	22.5
Mar. 18, 1901	St. Johnsbury, Vt.	33	35.5	.....	22.5
Nov. 1, 1901	.....do.....	40.5	32.5	.....	22.5
Aug. 16, 1902	.....do.....	40.5	35.5	32.5	22.5
Apr. 24, 1903	.....do.....	33	35.5	32.5	22.5
Jan. 14, 1901	Enosburg Falls, Vt.	38	51	.....	22.5
Oct. 1, 1904	.....do.....	40.5	47.5	.....	22.5
Oct. 15, 1900	Jonesville, Vt.	45	55	50.5	22.5
Mar. 11, 1901	Derby Line, Vt.	33	38.5	.....	24.5
Feb. 17, 1902	.....do.....	40.5	32.5	.....	24.5
May 14, 1902	.....do.....	40.5	38.5	32.5	24.5
Jan. 6, 1904	.....do.....	40.5	39.5	32.5	24.5
Nov. 6, 1902	East Highgate, Vt.	40.5	39.5	31.5	22.5
Nov. 10, 1903	.....do.....	40.5	39.5	32.5	22.5
Oct. 25, 1900	Highgate, Vt.	33	39.5	.....	22.5
Feb. 18, 1900	Newport, Vt.	33	38.5	.....	22.5
Jan. 18, 1904	.....do.....	40.5	39.5	32.5	22.5

a Prorating by New England railroads was resumed during 1906.

The above rates, effective January 2, 1907, were published in Dunkirk, Allegheny Valley & Pittsburgh R. R. tariff I. C. C. No. 503, effective January 1, 1907, excepting to Enosburg Falls and Jonesville, which were published in Penna. R. R. tariff I. C. C. S. No. 1043, effective January 2, 1907.

The result of this reduction in rates was a rapid increase in Mr. Westgate's business into this territory. His shipments into northern Vermont, New Hampshire, and the edge of Canada bordering on these States (but not including northern New York) increased from 470 barrels for the year ending July, 1906, to 835 barrels for the year ending July, 1907, and for the 7 months from July, 1907, to January, 1908, they were 1,403 barrels. (Westgate, vol. 6, p. 2880.) Mr. Westgate testified further that a difference of 16 cents

per 100 pounds in freight rates was equivalent to 1 cent per gallon, and that he considered a profit of one-half cent per gallon on the product of his refinery a good profit; so that the reduction in rates was equal, in most cases, to more than a fair profit on oil. (Ibid, 2879.)

4. Notwithstanding this great change in the policy of the New York Central and other lines in this territory during 1905 and 1906 with respect to shipments to points in the United States, they continued a discriminatory policy with respect to shipments to Canadian points adjoining this territory.

At the time when the Boston rate basis was put in effect into this territory generally it was for the time being applied also to Canadian points on the New York & Ottawa Railway, then controlled by the New York Central, and on the Adirondack Division of the New York Central in Canada. Directly afterwards, however, the Boston rate was withdrawn, and the third-class rate of 33 cents per 100 pounds, which Mr. Westgate had previously been paying, was restored so far as points in Canada were concerned. (Westgate, vol. 6, p. 2875.) Mr. Westgate took up the matter with Mr. Smith, division freight agent of the Lake Shore Railroad at Cleveland, requesting that Boston rates be applied to these Canadian points. Mr. Smith wrote him, October 9, 1906 (Petitioner's Exhibt, 818):

> I presume you are aware of the fact that the Canadian lines have declined to join us in any through rates on oil, and as the greater part of the New York & Ottawa lies in Canada, we have been unable to get any through rates in connection with this road in effect.

In view of the fact that the New York Central itself controlled the New York & Ottawa as well as the Adirondack Division, this reference to a refusal of the Canadian lines to join in these rates is obviously absurd. That is, the New York Central itself, over lines which it controlled, could have applied this Boston rate to points in Canada to which Mr. Westgate wished it applied.

While Mr. Westgate thus, as late as 1908, was paying a rate of 33 cents from Titusville to Canadian points on the New York & Ottawa and the Adirondack Division of the

New York Central, very much lower rates were made by the New York Central from Buffalo, a Standard refining point, to this same territory. The Government introduced in evidence a series of tariffs (Petitioner's Exhibits 841–845) of the New York Central beginning March 25, 1905, and continuing to the present time, naming rates on oil from Buffalo to twelve specified points on the Adirondack Division of the New York Central in Canada. The rate from March 25, 1905, to October 6, 1906, was 24 cents, and thereafter only 18½ cents, as compared with 33 cents from Titusville. The Government also introduced a series of New York Central tariffs naming rates from Buffalo to Cornwall, Finch, and Ottawa, Ontario, on the lines of the New York & Ottawa Railway. These tariffs, beginning with May, 1904, applied a rate of 24 cents, which was continued until 1908, as against 33 cents from Titusville. (Petitioner's Exhibits 846–849.)

In 1908 (shortly before his testimony was given) Mr. Westgate learned of the existence of these rates and received copies of the tariffs. Noting the great difference between the rates from Buffalo, a Standard refining point, and Titusville, he took up the matter with Mr. McGrath, soliciting freight agent of the Lake Shore & Michigan Southern Railway, and called his attention to these tariffs from Buffalo. Mr. McGrath said: "Now, don't that beat the devil?" Mr. McGrath then admitted that such a difference in rates was not justified, and that, in view of the fact that the rate from Titusville to Boston and territory taking Boston rates was then only 2 cents per 100 higher than the rate from Buffalo to the same points (the relation having been changed in 1907), there should not be a difference of more than 2 cents between Titusville and Buffalo on shipments to these Canadian points, which in general took the Boston basis. (Westgate, vol. 6, pp. 2877, 2878.)

It is certainly absurd that the New York Central lines, when practically forced to do so, should have made a rate of 19 cents from Titusville to points on the very border of Canada in northern New York, and then insist on charging a rate of 33 cents to points on their own lines just across the border, at the same time charging 18½ cents to most of the same points from Buffalo.

DEFENDANTS' COMPARISON OF RATES ON LESS THAN CARLOADS FROM OLEAN AND FROM INDEPENDENT REFINING POINTS TO VERMONT.

Mr. Felton, of the Standard, in an attempt to weaken the force of the Government's evidence showing the extraordinary discrimination in the rates to Vermont, as between independent refiners shipping from western Pennsylvania and vicinity, and the Standard Oil Company shipping from Olean, sought to show that, whatever might be the rates on carloads, independent refiners had a more favorable rate basis on less than carload shipments than the Standard had. He introduced Defendants' Exhibit 142, purporting to compare the less-than-carload rates from Bradford, an independent refining point, to points on the Rutland Railroad in Vermont with the rates from Olean, made up on the basis of the carload rates from Olean to Burlington, Rutland, and Bellows Falls, plus the less-than-carload rates from those points to the same destinations. Most of these alleged less-than-carload rates from Olean are higher than those alleged to have existed from Bradford.

This comparison we consider in every respect misleading and incorrect.

In the first place, we believe that the evidence shows that, at least since 1900—which was as far back as the testimony of Mr. Schindler on this subject was carried—the rate of 33 cents, stated as in existence from Bradford on less than carload shipments, was not applicable. This 33-cent rate is the third-class rate, and the evidence shows that only second-class rates could have been applied on less-than-carload shipments. Mr. Felton relies, for the proof of the 33-cent rate, on the fact that the Official Classification states that oil in less than carloads is third class, and that the third-class rate named in tariffs from Bradford to points on the Rutland Railroad was 33 cents. We call attention, however, to the fact that, at least as far back as November 6, 1900, the Rutland Railroad had exceptions to the Official Classification, duly filed with the Interstate Commerce Commission, stating that on its lines oil in carloads would be third class, but oil in less than carloads second class. The initial line out from Bradford could not, therefore, apply a third-class rate on less than carloads to points on the Rutland Railroad. In other words, the Official Classification, providing that oil in

less than carloads should be third class, would not apply, because of the published exceptions to that classification issued by the Rutland Railroad. (See Schindler's testimony, vol. 4, p. 1725.)

In the second place, Exhibit 122 and Mr. Felton's testimony show that in computing the alleged rates from Olean there has been included, in addition to the railroad rates themselves, a charge of 8 cents per 100 pounds, equal to ½ cent per gallon, for the cost to the Standard of breaking up carload shipments at Burlington and putting the oil into barrels and rehandling it for less-than-carload shipments. It is absurd to put this item of expense into the computation without at the same time putting in a similar item of expense for barreling the oil shipped by the independent refiner from Bradford. There is no evidence that it does not cost as much to barrel oil at the refineries as at some intermediate point.

In the third place, there is no evidence that the Standard Oil Company made any less-than-carload shipments from Olean to the points on the Rutland Railroad named in the exhibit, and consequently the comparison is merely an academic one as between rates which might have been paid. Mr. Felton was requested by counsel for the Government to furnish a statement showing what, if any, less-than-carload shipments had been made to these points, but he wholly failed to do so. It is true that he testified that some of the points were not tank stations and therefore could not receive carload shipments, but it appears from the evidence of numerous witnesses that the Standard Oil Company's tank wagons frequently drive considerable distances from tank stations, and, for aught that appears from the evidence, all the towns mentioned in this exhibit may have been so supplied. (See Felton's testimony, vol. 14, pp. 1645–1652, 1657–1658.) The rates on which the great bulk of oil traffic moves are carload rates, and the discrimination in carload rates as between the Standard and independent refiners on shipments to Vermont are in no way mitigated by this alleged comparison of less-than-carload rates.

Mr. Felton also put in another exhibit (123), purporting to make a similar comparison between the rates from Bradford and from Olean on less-than-carload shipments to points on the Central Vermont Railway in Vermont. Aside from

the fact that all the criticisms which have been made with respect to the exhibit purporting to show rates to points on the Rutland Railroad apply to this exhibit also, the court will note that Mr. Felton himself admits that the alleged rates from Bradford to points on the Central Vermont were in effect only for a few months a long time ago, namely, from November 14, 1899, to February 15, 1900. (Felton, vol. 14, pp. 1645, 1646.)

DISCRIMINATION AGAINST INDEPENDENT REFINERS THROUGH FAILURE OF RAILROADS TO PRORATE ON SHIPMENTS TO NEW ENGLAND.

DESCRIPTION AND EFFECT OF THIS POLICY.

Having thus considered the secret rate combinations to points in Vermont and within the State of Vermont, it remains to consider the discrimination in the open rates to and in New England territory which gave the Standard Oil Company a great advantage over independent refiners throughout the greater part of that territory. *This discrimination may be summed up in the phrase that the railroads prior to 1906, refused to "prorate" on oil shipments rom western refining points into New England, except as to a very limited territory. Their practice with respect to oil was radically different from that with respect to commodities generally; it resulted in increasing the rates charged to independent shippers on an average about 11 cents per 100 pounds above a normal rate basis, and gave the Standard Oil Company a very material advantage*, arising from the fact that it had refineries located at the seaboard from which shipments leading to New England ports could be made by water and the final destinations reached by very short rail hauls.

The location of the Standard's refineries at the seaboard gave it a natural advantage of considerable importance in any case, but this natural advantage was unreasonably and abnormally enhanced by the policy of the railroads with respect to the rates from these independent refining points farther west.

The principal railroads in New England are the New York, New Haven & Hartford, the Boston & Maine, the Maine Central, the Boston & Albany, the Central Vermont, and the Rutland. These railroads connect with lines such

as the New York Central, the Erie, the Pennsylvania, and others, which in turn reach the independent refining points of western Pennsylvania and Ohio. Practically all of the independent refineries in the United States were until comparatively recently situated in this territory, and even up to the present time there are only three or four situated at the Atlantic seaboard and able to take advantage of water transportation to New England points.

What is known in railroad parlance as "prorating" means the joining by two or more systems of railroads in through rates, which are divided, or prorated, among them. Such through rates are almost always lower than the sum of the local rates of the separate lines between the same points. On classified articles and on commodities generally the railroads coming from western points, including western Pennsylvania and Ohio, have long had prorating arrangements with the New England railroads for the making of through rates. (Schindler, vol. 4, p. 1737; Boltz, vol. 5, p. 2032; Kallman, vol. 15, p. 2319, and others.) Under these prorating arrangements the rate from such western points on traffic other than oil to a large proportion of the towns in New England was the same as the rate to Boston, or, in railroad parlance, these towns took the Boston rate—were on the Boston rate basis. Although Mr. Felton, of the Standard Oil Company, sought to show (Defendant's Exhibit 121) that there were numerous towns to which the Boston rate was not applied on traffic generally, Mr. Schindler's testimony shows clearly that to the large majority of the towns in New England the Boston rate applied without restrictions, and that to many others the Boston rate was subject only to the limitation that it should not be lower than the rate from Cleveland to Boston. (Schindler, p. 425, vol. 20.)

With respect to oil, however, the policy of the railroads was exceptional, and in general they did not prorate at all—that is to say, instead of joining in through rates, and particularly instead of applying the Boston rate to points on their lines, the New England roads insisted on charging arbitrary (local) rates above the Boston rate.

Mr. Schindler testified that, prior to 1906, New England railroads generally did not prorate on oil (vol. 4, pp. 1735-1737), and he introduced a map showing the various railroad

lines in New England, and indicating on what parts thereof the Boston rate was applicable on shipments of petroleum from the West. (Petitioner's Exhibit 672.) According to this map, the only New England lines to which prorating arrangements on the Boston basis existed were the Boston & Albany and certain parts of the Boston & Maine, chiefly in Massachusetts, but including a small territory in southern New Hampshire. (The defendants subsequently pointed out that prorating was also in effect on the Delaware & Hudson between the New York state line and Rutland, Vt., which is not denied by the Government.) This territory of the Boston & Maine to which prorating was in force was several times referred to in the testimony as the Fitchburg Division, but it was rather the territory of the old Fitchburg Railroad prior to its absorption by the Boston & Maine, and is now part of several different divisions of that railroad. These divisions are accurately described in a letter from Mr. Donovan, freight traffic manager of the Boston & Maine (Petitioner's Exhibit 935), and a letter from Mr. Johnson, of the Pennsylvania (vol. 17, p. 3661). Mr. Boltz gave the same testimony as to the absence of prorating arrangements on oil to the greater part of New England (vol. 5, pp. 2032–2034), as did Mr. Johnson, of the Pennsylvania (vol. 17, p. 3661), and Mr. Kallman, of the New York Central. (Vol. 15, pp. 2318–2319.)

As is pointed out more fully later, several witnesses for the defendants contended that to practically all the New England territory except points on the New York, New Haven & Hartford Railroad the Boston rate did apply on oil on shipments from Toledo and Cleveland, though no such claim is made with respect to shipments from other independent refining points. We shall show that this contention is based on strained and impossible interpretations of tariffs, and, in any case, it has little significance, since it relates only to a limited period of time and to two points of origin.

RESUMPTION OF PRORATING IN 1906.

The subject of the failure of the New England roads to join with western lines in through oil rates was brought before the Interstate Commerce Commission, in two proceedings initiated by independent refining interests, during 1906.

The opinion of the commission on these cases is given in Petitioner's Exhibit 658. The commission properly held that it then had no authority in the matter, but it severely criticised the railroads for failing to prorate on oil. In 1906 also the Bureau of Corporations published its report on the transportation of petroleum, in which this policy was likewise severely criticised. Only after these proceedings and this report did the railroads resume prorating on oil. (Schindler, vol. 4, p. 1739; Boltz, vol. 5, p. 2034.) This resumption of prorating resulted in a great reduction in the cost of transportation from independent refining points to a large proportion of New England, particularly as the rates to Boston itself, which were the basis rates, were soon after reduced. Mr. Boltz, traffic manager of the National Petroleum Association, testified that this readjustment resulted in reductions ranging from 2½ cents to 20 cents per 100 pounds on shipments from western Pennsylvania and Ohio, the average being about 11 cents per 100 pounds. (Vol. 5, p. 2035.)

Mr. Schindler testified to several exhibits (Petitioner's Exhibits 621–625) showing the effect of the absence of prorating upon oil rates to points in New England prior to 1906. These tables are intended to compare the actual oil rates to the numerous points named on the Boston & Maine, Maine Central, New York, New Haven & Hartford, Central Vermont, and Rutland railroads with the rates to Boston, which, had prorating arrangements been in effect, would have applied, and which were subsequently applied when prorating was resumed. The comparisons are made with respect to rates from Toledo, Cleveland, and Oil City.

Taking the exhibits as they stand, the court will observe that the rates actually in effect on oil, according to Mr. Schindler's testimony, were from about 3 cents to as much as 29 cents higher than the Boston rates which should have been applied to these points. The changes which Mr. Felton claims should be made in these exhibits, which we shall consider fully later, would not appreciably affect this comparison except as to the rates from Toledo and Cleveland to many points, where the rates claimed by Mr. Felton, as we shall show, are based on impossible interpretations of the tariffs.

ADVANTAGE TO STANDARD FROM FAILURE TO PRORATE, AND ITS CONNIVANCE THEREIN.

As already stated, the high rates from western refining points to New England points, resulting from this failure of the railroads to prorate, were a decided advantage to the Standard Oil Company. That company has large refineries at New York Harbor, Philadelphia, and Baltimore, to which it brings crude oil from the West through its pipe lines at an exceedingly low cost of transportation, as already shown. From these refineries, oil is shipped by water to New England ports, and has to be hauled only short distances by rail. Even had the rail rates for such hauls of the Standard's product been comparatively high rates, the Standard would still have had a great advantage over competitors shipping from the West, because such rates applied to very short distances only. As a matter of fact, moreover, the rates charged by the railroads from these ports from which the Standard Oil Company made shipments were, in some cases at least, exceedingly low rates as judged from the general standard of oil rates throughout the country. These rates contrast strikingly with the high rates which, due to the absence of prorating, competitors had to pay.

Mr. Boltz testified that, prior to the re-establishment of prorating on oil, the rates from western Pennsylvania and Ohio refineries into New England on oil were, in general, much higher than fifth-class rates. Another table, giving rates from Cleveland to a large number of points in the Central States, shows that the oil rates in that territory averaged a little lower than fifth-class rates, but considerably higher than sixth-class rates. (See Petitioner's Exhibit 656.) On the other hand, many of the rates from Standard shipping points on the New England coast to neighboring interior points were not only lower than fifth class, but decidedly lower even than sixth class, which latter class takes rates considerably less than fifth-class rates.

Thus, Mr. Boltz introduced a table showing the rates on oil from New London, Conn., one of the Standard's shipping points, to points on the Central Vermont Railroad in Connecticut and Massachusetts (Petitioner's Exhibit 654), including also a few in Vermont. This table shows that the average rate on oil in carloads was 6.4 cents per 100 pounds,

as compared with sixth-class rates averaging 10 cents. Again, Mr. Schindler introduced two exhibits comparing the rates on oil from Wilson Point, Conn., and East Providence, R. I., Standard shipping points, to a considerable number of destinations on the New York, New Haven & Hartford Railroad. (Petitioner's Exhibits 673 and 674.) The average oil rate from Wilson Point to these destinations was 7.4 cents, as against an average sixth-class rate of 9.4 cents, while from East Providence the oil rate averaged 8.9 cents, as against 11.9 cents on sixth class.

Counsel for the Standard Oil Company objected to the testimony regarding the failure of the New England lines to prorate, on the ground that the rates were made by the railroads without the connivance or influence of the Standard Oil Company. There is, however, evidence to show that the Standard Oil Company did exercise influence upon the railroads. Mr. Todd, vice-president of the New York, New Haven & Hartford Railroad, and in charge of its traffic, in 1905 stated to Mr. Garfield, Commissioner of Corporations, in the presence of Mr. Schindler, with reference to the absence of prorating arrangements on the New York, New Haven & Hartford: "The practical effect up to now, not the entire effect, but the practical effect, has been until now to largely throw the business into the hands of the Standard Oil Company." Todd said also: "Of course, they (referring to the Standard) have wanted us not to prorate on oil." This testimony is competent for the reason that Mr. Rosenthal, counsel for the Standard Oil Company, in cross-examining Mr. Schindler regarding the reasons of the New York, New Haven & Hartford road for failing to prorate, asked him to state the reasons given by Mr. Todd in this conversation with Mr. Garfield. Since part of the conversation was thus brought into the evidence, the Government had the right to put in the whole of it. (See testimony of Schindler, vol. 4, pp. 1747–1750, 1768A, 1768B.)

It is true that Mr. Todd in this conversation, as brought out by the counsel for the defense in cross-examining Mr. Schindler, claimed that the refusal to prorate on the part of the New York, New Haven & Hartford was justified because, had it prorated with the Pennsylvania and Lehigh Valley roads, which connect with the New York, New Haven

& Hartford via New York Harbor, it would have been necessary to transport oil across New York Harbor on the barges or floats of the New Haven road, and that he considered this dangerous on account of the inflammable character of the product. He said that, if the New Haven did not prorate with these lines for that reason, it could not in fairness prorate with connections at other points where the same difficulties would not exist. It is noteworthy that the defendants did not call Mr. Todd himself to the witness stand to present this explanation, where he would have subjected himself to cross-examination regarding it. Mr. Felton, traffic manager of the Standard Oil Company, testified that there was substantially no risk of fire in the transportation of oil. He stated that the average annual fire loss of the defendant companies in the transportation of petroleum does not exceed $25,000, and that he never heard that the element of risk of fire was considered in making rates on oil. (Vol. 14, p. 1613.) Moreover, even if the railroad company was unwilling to accept shipments coming through New York Harbor, it does not follow that there would have been any impropriety in its prorating with connections at other points. As we have already stated, this railroad has resumed prorating on oil since 1906, and no evidence has been introduced by the defendants to show that any injurious consequences have followed.

We believe that the primary reason why the New York, New Haven & Hartford, as well as the other New England roads, refused to prorate on oil was that they desired to favor the Standard Oil Company, and this is the more evident because of the very low rates which at least the New York, New Haven & Hartford and the Central Vermont roads made for the Standard on shipments from coast ports.

ERRORS CLAIMED BY DEFENDANTS TO EXIST IN THE GOVERNMENT'S STATEMENT OF RATES TO NEW ENGLAND.

We turn now to a consideration of the so-called errors in the Government's exhibits showing the effect of the failure of the New England roads to prorate. Mr. Felton, of the Standard Oil Company, introduced a number of exhibits (Defendants' Exhibits 127–131 A) purporting to show the correct rates to the same points covered by the exhibits intro-

duced by Mr. Schindler, already described, namely, Petitioner's Exhibits 621 to 625, inclusive. These so-called errors are of three classes:

1. Cases in which, especially with regard to certain rates from Oil City, Pa., no claim is made by the defendants that prorating arrangements existed, but it is claimed that somewhat lower combinations of local rates could be made than those stated in the exhibits.

2. Cases in which lower rates did exist via some route to a given point, but not via the railroads which refused to prorate.

3. Cases, namely, in rates from Toledo and Cleveland to many points, in which the defendants contend that certain railroads did prorate and make the Boston rates apply, but in which the Government contends that the defendants wrongly interpret the tariffs and that the Boston rates did not apply.

Cases of the first class amount to little, as the changes in the rates alleged are slight. Cases of the second class have no bearing upon the testimony of the Government with respect to the policy of the particular railroads under consideration in failing to prorate, since the rates given by the defendants are via other routes, over which the Government never contended that prorating arrangements were lacking. Cases of the third class relate only to shipments from two points, Toledo and Cleveland; the rates claimed to have existed from Toledo, even if they did exist, were in force only subsequent to December, 1904, and applied only via one road; and such rates from Cleveland likewise applied only via one road. The rates from Oil City, which are little affected by the changes claimed by the defendants, are typical of the rates from the great majority of independent refining points, most of which are situated in western Pennsylvania and have the same general rate basis as Oil City. We claim therefore that, even were the contentions of the defendants with respect to these exhibits well founded, they would still fail appreciably to weaken the force of the Government's evidence with regard to the discriminatory effect of the failure of the New England lines to prorate.

1. Taking up these classes of alleged corrections more in detail, the court will note that in the rates from Oil City to

points on the Maine Central, New York, New Haven & Hartford, Central Vermont, and Boston & Maine (Defendants' Exhibits 127, 129, 130 and 131), Mr. Felton claims that, to a considerable number, but by no means all of the points named in the Government's exhibits, rates could be secured which were from 1 to 15 cents lower than the rates stated by the Government, the difference, however, in the great majority of cases not exceeding 3 or 4 cents. Even taking the rates stated by the defendants to these points, they are still very much higher than the Boston rates, which, under the ordinary practice of the railroads with respect to prorating on other commodities, should have applied on oil.

Moreover, the court will note that many of these lower rates named by Mr. Felton are combinations of local rates based on unfamiliar junction points, such as Mechanicsville, N. Y., and Rotterdam Junction, N. Y. Mr. Schindler testified that these combinations, in many cases, were made by using class rates from the junction points, and not commodity oil rates. He further stated that the rates which he quoted from Oil City to Maine Central and Boston & Maine points were rates shown through to destination in published tariffs of the initial line at Oil City, namely, the Lake Shore & Michigan Southern (not, however, through rates, but made by the addition of specified arbitraries to the Boston rate); and he testified further that these rates would, in all probability, be the rates which would actually be applied on independent shipments, because such shippers would not know of the unusual combinations named by Mr. Felton as giving lower rates, and would naturally assume that the combination rates shown in the tariffs from their own stations to destination were the lowest combination. (Vol. 20, pp. 426, 427, 428.) Mr. Schindler also testified, with respect to the rates named by the defendants in Exhibit 129 from Oil City to points on the New York, New Haven & Hartford Railroad, which were based, as shown in the exhibit, on rates via Campbell Hall, N. Y., that said rates from Campbell Hall were first put in effect May 10, 1904, and were taken out January 25, 1905, and not restored until September 1, 1905. (Vol. 20, p. 427.)

With respect to rates from Toledo and Cleveland to points on the New York, New Haven & Hartford Railroad, the changes claimed by the defendants in the rates stated by the Government are similar to those from Oil City, and are quite unimportant. The same is true of the rates from Cleveland to points on the Central Vermont Railroad.

2. The second class of changes in the Government's exhibits contended for by the defendants relate only to rates to points on the Rutland Railroad covered by Petitioner's Exhibit 625, the alleged corrections of which appear in Defendants' Exhibit 131 A. The defendants show that to Rutland and Bellows Falls, Vt., the Boston rate was applicable, and that to some other points, by combination of the Boston rate to these two places with the local rates beyond, a lower total charge could be made than shown in the petitioner's exhibit. Mr. Schindler explained, however, in his rebuttal testimony, that, while in his direct testimony he inadvertently stated that the rates given in his exhibit were the lowest combination of rates, he meant to say that they were the lowest combination of rates which could be made, using the Rutland Railroad as the route. He stated that the exhibit was intended to show the effect of the failure of the Rutland Railroad to prorate upon the rates via the Rutland Railroad, and that he knew at the time of his previous testimony that the Boston rate was available to Rutland and Bellows Falls by way of the Boston & Maine or Delaware & Hudson railroads, although not available over the Rutland. (Vol. 20, p. 428.) We claim, therefore, that the petitioner's exhibit showed with substantial correctness what it was intended to show, namely, the effect of the Rutland Railroad's failure to prorate. With respect to most of the towns, even the rates contended by the defendants to be available were much higher than the Boston rates, which were subsequently made applicable, and which should have been applicable at all times, in accordance with the general policy of the Rutland Railroad on other commodities.

3. Finally, we take up those cases where, on shipments from Toledo and Cleveland, the defendants contend that the Boston rate was actually applicable, instead of the much higher rates shown in the petitioner's exhibits.

Alleged application of Boston rates from Toledo to New England territory.—They contend that from Toledo the Boston rate, 27 cents, was applicable to all points on the Maine Central Railroad listed in Petitioner's Exhibit 622 (Defendants' Exhibit 127), to all points on the Central Vermont covered by Petitioner's Exhibit 624 (Defendants' Exhibit 130), and to all points on the Boston & Maine Railroad shown in Petitioner's Exhibit 621. (Defendants' Exhibit 131.) In other words, they contend that the Government's exhibits which showed the rates to these points as very much higher than the Boston rates—the difference ranging from 4 cents to as much as 29 cents—were not the lowest available rates, but that the Boston rates themselves were available.

Although this point is of very little importance, for the reason that there is no contention that the Boston rate was applicable to this territory from Toledo prior to December, 1904, the defendants offered an enormous amount of testimony on the subject, with the evident object of discrediting the Government's testimony; and we therefore desire briefly to call attention to the character of the documents on which they base their position, and to the testimony of the witnesses on both sides.

The defendants rely wholly upon two documents—a tariff of the Grand Trunk Railroad (Defendants' Exhibit 124 A) and a billing book of the National Despatch-Great Eastern Line (Defendants' Exhibit 124 B). It was brought out in the testimony of various witnesses that it is a common practice for railroads in naming rates to eastern points to name what are known as "basis rates" to leading cities in the tariff, and to apply these same rates to neighboring territory by means of what are known as "shipping guides," "billing instructions," etc., of which a large number are issued by the various railroad systems. These billing books, of which Defendants' Exhibit 124 B is one, contain long lists of towns and indicate as to each what rate basis applies. For instance, in Defendants' Exhibit 124 B, Portland, Me., among numerous other places, is listed with the indication that Boston rates apply.

The tariff of the Grand Trunk Railroad, relied on by the defendants, is known as I. C. C. No. A 944, and took effect December 12, 1904. It was issued by the Grand Trunk system and the Detroit & Toledo Shore Line Railroad in connec-

tion with various other lines. The Detroit & Toledo Shore Line operates a road from Toledo to Detroit, and constitutes the only entrance of the Grand Trunk into Toledo. It is jointly owned by the Grand Trunk and the Toledo, St. Louis & Western (Clover Leaf) roads. It is stated on its face to be a tariff on petroleum products in carloads from Toledo to points in Central Freight Association territory and Trunk Line territory.

On the second page, under the heading "From Toledo, Ohio, to Trunk Line Territory," rates are named to 17 points in New York, New Jersey, Massachusetts, and Pennsylvania; among others, to New York City, Jersey City, Philadelphia, Albany, and Boston. The rate named to Boston is 27 cents per 100 pounds, which is the same rate as is made to Boston by other roads from Toledo. Beneath this list of rates appear the following words: "For list of stations to which above rates apply see various fast freight line billing instructions."

The defendants propose to use this tariff in connection with the National Despatch-Great Eastern Line billing book issued in 1903, constituting Defendants' Exhibit 124 B. That billing book, as already stated, names a large number of towns of destination, including a great many which are indicated as taking Boston rates, and the defendants contend that under that book, in connection with this tariff, the Boston rate applied to a very large part of New England, including the points on the Central Vermont, Boston & Maine, and Maine Central roads covered by the petitioner's exhibits already referred to.

This National Despatch-Great Eastern Line billing book, however, conspicuously on its first page contains the following paragraph: "*Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested.*" (Vol. 18, p. 356.)

We claim that this note in the billing book means simply and plainly that oil rates to Boston, or any other point named in any tariff, can not be expanded to cover other points of destination by reason of anything in the billing book; in other words, that the billing book has nothing to do with

petroleum whatever. The defendants argue, however, and several railroad men testified to that interpretation, that that part of the note in the billing book which says that "such shipments will be subject to special tariffs and local regulations of railroads interested" is practically a reference to such a tariff as the Grand Trunk Tariff I. C. C. No. A 944, and that such a tariff having been issued, the billing book thus becomes applicable. This contention is absurd. Mr. Jones (in charge of the tariff department of the Interstate Commerce Commission, who was in the railroad business for many years), as well as other witnesses for the Government, testified that their interpretation of these words in the note is that "special tariffs" means tariffs naming rates specifically to the points of destination by name. (Jones, vol. 20, p. 278; Sheahen, *ibid.*, p. 387.)

The defendants' witnesses argued also that the words "For list of stations to which above rates apply see various fast freight line billing instructions," appearing under that part of the tariff containing the Boston rate of 27 cents, necessarily meant that for list of stations to which the Boston rate applied various fast freight line billing instructions should be consulted, and would have no meaning whatever unless such billing instructions could be used. The obvious reply to this is, that numerous other points of destination are named above this note, and, as several witnesses testified, there are other billing instructions which might have the effect of expanding the application of the rates prescribed to these other points.

The substance of the defendants' contention was, as we apprehend it from the statements of the witnesses, that the tariff by this reference to billing instructions canceled the restriction named in the billing book. They seek further to strengthen this position by calling attention to the fact that the National Despatch-Great Eastern Line is mentioned on the face of the tariff. The court will notice, however, that there is no statement anywhere on the tariff that the National Despatch-Great Eastern Line billing book is to be used in conjunction with the tariff; but the National Despatch-Great Eastern Line is simply mentioned for the purpose of including as parties to the tariff the railroads

which are parties to the National Despatch-Great Eastern Line. This appears plainly from the language of the tariff, which names various railroads as parties specifically, and continues: "And connections, as specified in the following agents' guides and billing lists: Comp. Exp. line, Grand Trunk Despatch Line, Nat. Despatch-Great Eastern Line," etc.

It is true that among other witnesses who interpreted this tariff and billing book as making Boston rates applicable to other points in New England territory was Mr. H. E. Martin, chief of the tariff bureau of the Grand Trunk Railroad, who issued the tariff. We believe, however, that the court should take notice of the fact that the higher officers of railroad companies who were summoned by the defendants in general testified broadly in favor of every practice which the defendants have pursued with respect to the transportation of oil. We believe that the very fact that the railroad companies have been shown to have so generally favored the Standard Oil Company in rates is an indication that the testimony of railroad officers as to matters of opinion in which the Standard Oil Company is involved can not be relied upon. We believe that the fact that two or three witnesses, in no way connected with the Government but connected with railroad companies, testified emphatically that they did not think that this tariff and billing book made the Boston rate so applicable is worth far more than all the testimony of the defendants' expert witnesses.

Mr. Fulton, secretary of the Chicago and Ohio River Committee, who has had many years of experience in railroad matters, testified that he could not name the Boston rate to other points under these two tariffs. (Vol. 20, pp. 363–366.) Most important of all, Mr. Sheahen, the local freight agent of the Detroit & Toledo Shore Line at Toledo—that is, the agent from whose office the alleged rates were supposed to apply—gave the same testimony and stated further, under cross-examination, that he had consulted numerous clerks in his office who had all held the same opinion. (Sheahen, vol. 20, pp. 384–398.) Mr. Sass, chief clerk to Mr. Sheahen, gave the same interpretation of this tariff. The searching cross-examination of the defendants' counsel failed in any way to weaken the testimony of these witnesses. We call the atten-

tion of the court particularly to the fact that it is such men as Sheahen, namely, the local agents of the railroads, who handle shipments and who consequently are called upon most frequently to determine what rate would be paid on such shipments.

Mr. Schindler, rate expert of the Bureau of Corporations, who had many years of railroad experience in various positions and is thoroughly familiar with traffic matters, likewise testified that, in his opinion, the Grand Trunk tariff and the billing book in question did not apply Boston rates from Toledo to points in New England. (Vol. 20, pp. 419–421.) We cannot conceive that the fact that Mr. Schindler and Mr. Jones are employees of the Government could be considered as tending to make them prejudiced witnesses, as the defendants have sought to claim. On the contrary, we consider their testimony on questions of the interpretation of tariffs far more unbiased and trustworthy than that of railroad men who are under the powerful influence which the Standard Oil Company can exert by reason of its financial power, of its representation in the directorates of railroad companies, and of its enormous shipments.

Finally, we wish to point out the absurdity of the contention that one railroad line, namely, the Grand Trunk, could knowingly and intentionally have had in effect a tariff from Toledo to a multitude of points in New England, naming rates far lower than those available by other railroads from the same point of origin or from competing refining points. We claim that the note in the National Despatch-Great Eastern Line Billing Book, that petroleum and its products could not be taken under the instructions of that guide, was plainly put there by reason of the fact that the New England railroads did not prorate on oil, and would not join in accepting their proportion of the Boston rate on shipments to points in their territory generally. This note is evidently precisely similar in meaning and purpose to the notes appearing in the Red Line East Bound Billing Instructions and other similar guidebooks. The Red Line is a fast freight line operated particularly in connection with the Lake Shore Railroad. As testified by Mr. Schindler (vol. 4, p. 1736), the following notes appear in the Red Line Billing Instructions with respect to rates on oil

to Boston & Maine points, New York, New Haven & Hartford points, and Rutland Railroad points:

> Shipments of petroleum oil destined to points on or reached by the B. & M. R. R. can not be taken at rates named in this tariff unless such points are prefixed by reference No. 5 (points having that reference number being those we have already described, in a limited territory only, corresponding to the old Fitchburg Railroad).
>
> Shipments of petroleum oil destined to points on the New York, New Haven & Hartford Railroad can not be taken at rates named in this tariff. Such shipments will be subject to arbitrary rates from the various junction points of the Boston & Albany Railroad.
>
> Petroleum oil to points on the Rutland R. R. can not be taken at rates named in this tariff. Shipments will be subject to local rates from Norwood, New York.

The above-mentioned restriction with reference to the Boston & Maine Railroad would cover also the Maine Central, which is reached only via the Boston & Maine.

The Government showed by Mr. Schindler that the tariff of the Lake Shore Railroad, naming rates on oil from Toledo in force at the time under consideration, showed specifically arbitraries to be added to the Boston rate in making a total charge to the very points to which the defendants contend that the Grand Trunk was applying the Boston rate. For example, while the defendants claim that the Boston rate of 27 cents was applicable to Rockland, Me. on the Maine Central, the Lake Shore tariff shows plainly that to the Boston rate are to be added arbitrary charges amounting to 20 cents per 100 pounds, making the actual total rate 47 cents. (See Schindler, vol. 20, pp. 420, 421; Felton, cross-examination, vol. 14, pp. 1899–1900.) Mr. Zimmerman, assistant general freight agent of the Michigan Central, who contended that under the tariff and billing book above described the Boston rate was applicable from Toledo to Portland and other New England points via the Grand Trunk, admitted that it was not so applicable over his road, the Michigan Central, and that the Blue Line Billing Book used by the Michigan Central on shipments to New England was similar in all respects to the Red Line Book, the restrictive notes in which have already been quoted. (Zimmerman, vol. 15, pp. 2103–2106.) Mr. Kallman, of the New York Central, who also

thought that the tariff and billing book should be interpreted as applying Boston rates into this territory, nevertheless, when asked whether, if it were true that the Grand Trunk Railway during the year 1905 had a rate to a large number of New England towns much lower than the rates via the New York Central system, the lines in that system would not have learned this fact, stated: "I would say if that were true of the Lake Shore Railroad, that they would probably stir about to get an equal rate."

Mr. Schindler testified that he examined the records of shipments from Toledo over the Detroit & Toledo Shore Line during the period covered by this tariff, and found no shipments to New England points under it, at the Boston rate or any other rate. (Vol. 20, p. 424.)

As a matter of fact, there is no evidence presented by the defendants that the New England roads did prorate with the Grand Trunk on the basis of the Boston rate, and in view of the evidence which we have presented, and which we shall present, that they did not prorate, but charged arbitrary rates, the only manner in which the Boston rate could have been actually applied to other New England points would be by the initial line—that is, the Grand Trunk—absorbing, or paying, the arbitrary charge of the New England line out of the rate. As these arbitraries in many cases ran up to 20 cents per 100 pounds or more, they would have left almost nothing out of the alleged 27-cent rate for the long haul made by the Grand Trunk. If, by inadvertence, the Grand Trunk did put in a tariff which by a strained interpretation could be considered as applying Boston rates into this territory, and if, as a matter of fact, shipments had been made at that rate, the result would have been merely that the Grand Trunk, discovering its error, would have clarified the tariff immediately to make it conform to the tariffs of other roads.

That the Boston & Maine Railroad, which is one of those to points on which the defendants contend that the Boston rate applied from Toledo over the Grand Trunk, was not prorating with any western connection on oil, but was charging its arbitraries, is clearly shown by letters from Mr. Donovan, freight traffic manager of the Boston & Maine, to the Bureau of Corporations, which were introduced in evi-

dence by the Government. (Petitioner's Exhibits 934 and 935.)

Under date of August 22, 1905, at which time the defendants claim that this tariff and billing book applied Boston rates to points on the Boston & Maine Railroad generally, Mr. Donovan wrote: "Below is a list of our stations to which shipments of petroleum and its products are required to pay a local rate when received from connecting railroads." Then follows a large number of towns, several hundred, including all of the towns named in Defendants' Exhibit 131 as taking the Boston rate from Toledo. Again, on August 28, 1905, he wrote that through rates were published from the oil regions to points on certain specified portions of the Boston & Maine system (namely, those portions which we have already stated as being open to prorating on oil); but that "Shipments of petroleum and its products coming to us from connecting railroads, through waybilled to points on the divisions above stated, and destined to points on this railroad enumerated in my letter to you of August 22, 1905, to which no through rates are published from the oil regions of Ohio and Pennsylvania, would be subject to a local rate from the nearest point to which through rates are published from Ohio and Pennsylvania."

These are perfectly plain statements that, with the exception of certain specified points which the Government has already described, the Boston & Maine Railroad charged on shipments coming from connecting lines arbitrary rates above the Boston rate. The letters of Mr. Donovan refer to no exception in the case of the Grand Trunk Railroad. Besides, it would be perfectly absurd and utterly impossible in railroad practice for the Boston & Maine to prorate generally with one western connection and not with others. Consequently, as we have already stated, if the Grand Trunk Railroad by this tariff did, by inadvertence, make the Boston rate applicable to this territory, it could have carried it out only by absorbing these arbitraries.

Mr. Johnson, division freight agent of the Pennsylvania Railroad, testified that, assuming that the letters of Mr. Donovan were a correct statement of the facts, the Boston & Maine would have had to be allowed its local charges out of the 27-cent rate from Toledo. He said that he did not

believe that the Pennsylvania Railroad would have wanted traffic out of Toledo to this territory at the 27-cent rate. (Defendants' testimony, vol. 15, p. 2262.)

We call the attention of the court further to the fact that most of the defendants' witnesses who testified that in their opinion the Grand Trunk tariff made the Boston rate applicable to points in New England, were railroad men whose business is in the Middle West, and who admitted that they were not familiar with the New England situation and did not even know that there were any restrictions by any route upon prorating into that territory.

Mr. Martin, of the Grand Trunk System, admitted that he had not made any inquiries to find out whether there were restrictions upon prorating into this territory. It may be noted that the Grand Trunk first had access to Toledo in 1903 and first issued this tariff in 1904. The restrictions of the New England lines had been established many years before, and it is quite possible that Mr. Martin, not previously having issued tariffs on oil from Toledo to eastern points, was not familiar with these restrictions.

The defendants having substantially failed to prove that the Grand Trunk tariff and the National Despatch-Great Eastern Line Billing Book together would make the Boston rate applicable from Toledo to New England points generally, turned on cross-examination of the Government's witnesses in rebuttal to a new argument to establish the application of the Boston rate to at least certain points. They call attention to the fact that on the Grand Trunk tariff from Toledo itself there appears the following note: "Rates to intermediate stations will not exceed the rates to the next station of greater distance on the same railroad."

They claim that since the Central Vermont Railroad and the Boston & Maine Railroad were parties to this tariff and since they connected with the Grand Trunk Railroad at various places in northern New England, the points on those two roads intermediate between such junctions and Boston would, under this clause of the tariff, take Boston rates. Mr. Schindler, however, testified that the National Despatch-Great Eastern Line Billing Book itself prohibited shipments of petroleum at all via these routes, even to Boston itself; that the tariff itself showed nothing in regard

to routes and that agents would have to consult billing books to find the route from Toledo to Boston; that there were other routes by which the Grand Trunk, in conjunction with other roads, parties to the tariff, could reach Boston as to which there might be no such restrictions as existed with respect to shipments via the Central Vermont and Boston & Maine railroads. (Vol. 20, pp. 441 to 451.)

The reference to this intermediate clause in the tariff in any case has no effect to weaken the Government's evidence that there were no prorating arrangements between the New England roads and the western lines, and that the New England roads would have exacted their arbitraries on shipments from Toledo via the Grand Trunk, as they did on shipments from Toledo via other roads, and in fact from western points generally. If, not being familiar with such restrictions, the Grand Trunk by inadvertence issued this tariff, and if under it a shipment had been made at the Boston rate by reason of this clause respecting intermediate points, it could have applied that rate only by absorbing these arbitraries, and a natural result would be an immediate amendment of the tariff.

Alleged application of Boston rates from Cleveland to New England territory.—Mr. Felton also contended that the Boston rates were applicable on shipments from Cleveland to all the points on the Boston & Maine and Maine Central railroads covered by Petitioners' Exhibits 621 and 622. (See Defendants' Exhibits 127 and 131.) Here again we believe that we have proved clearly that this claim of Mr. Felton is based upon false and impossible interpretations of tariffs. Mr. Felton contends that this rate applied by reason of a tariff of the Baltimore & Ohio Railroad and the billing book of the Erie Despatch. He does not contend that the rate applies over other railroads out from Cleveland, but admits that the Lake Shore, for example, had a tariff that plainly the arbitraries which were to be added to the Boston rate in reaching these destinations. (Vol. 14, p. 1897.) He also admitted that the Standard Oil Company had never made any shipments from Cleveland on this alleged Boston rate to points on the Boston & Maine and Maine Central railroads, and the evidence shows that no such shipments were made by anyone.

Mr. Felton did not claim that the Boston & Maine had prorating arrangements with the Baltimore & Ohio on oil, but argued that that made no difference so long as the Baltimore & Ohio filed with the Interstate Commerce Commission a tariff naming the Boston rate. He said he did not know whether the Baltimore & Ohio would have had to absorb arbitraries of the New England lines out of this rate. He was shown that, according to the Lake Shore tariff from Cleveland, on shipments to Rockland, Maine, the arbitraries of the Boston & Maine and Maine Central railroads above the Boston rate amounted to 20 cents per hundred pounds, so that if these arbitraries had to be paid, the Baltimore & Ohio, out of the 24-cent Boston rate, would have gotten only 4 cents for its haul from Cleveland to the junction with the Boston & Maine. (Vol. 14, pp. 1899, 1900.)

The strained character of the interpretation by which Mr. Felton contends that the Boston rate was applicable to points in New England other than Boston is at once obvious from a consideration of the tariffs themselves. He refers for authority to a tariff of the Baltimore & Ohio Railroad. This does not itself name rates to any of these points, but simply names a rate of 24 cents from Cleveland to Boston. This tariff also names rates from many other points besides Cleveland and to a great many other points besides Boston. It contains a note of a purely general character referring to fast freight line guidebooks and billing instructions to find the points which take the same rates as are named to points actually covered by the tariff. This note is not connected directly with the statement of the Boston rate, and there are, as already stated, various billing books which do extend to additional points the application of rates named to other destinations, such as New York and Jersey City.

This tariff names a very large number of railroads as parties, and among others names the Erie Despatch. Mr. Felton contends that the tariff and the Erie Despatch Guidebook can, therefore, and should, therefore, be used together to ascertain rates. The Erie Despatch Guidebook shows that Boston rates are applicable to numerous other points, including those points on the Boston & Maine and Maine Central covered by Petitioners' Exhibits 621 and 622. This guidebook itself contains no restrictions with regard to oil

shipped to this territory, and consequently Mr. Felton contends that the tariff and the guidebook together make Boston rates applicable.

The fact is, however, that the Erie Despatch Guidebook can not be used in conjunction with the Baltimore & Ohio tariffs on shipments from Cleveland. It is noteworthy that although the defendants called numerous expert railroad men to testify regarding the application of the tariff from Toledo and regarding other matters of rate interpretation, only one of these was asked to give his opinion as to the alleged rates from Cleveland. The Erie Despatch is a guidebook issued by the Erie Railroad and designed primarily for use by the Erie and its connections. The absurdity of using the Erie Despatch Guidebook in conjunction with the Baltimore & Ohio tariff to name rates from Cleveland to New England points on the Boston basis is at once evident from the fact that the Erie Railroad itself, which has a line from Cleveland to the East, did not apply Boston rates to these same points. In fact, it is obvious that the only reason why the Erie Despatch Guidebook failed to contain the same restrictions regarding petroleum shipments as appear for example in the Red Line Guidebook already described is that the tariffs of the Erie Railroad themselves contain such restrictions and rendered reference to guidebooks for them unnecessary. Petitioner's Exhibit 1016 is the tariff of the Erie Railroad on oil from Cleveland and various other points to eastern destinations. It states plainly that Boston rates will not apply to points on the Boston & Maine other than certain specified points. The language in this respect is as follows:

> For points off the Erie R. R. taking Rochester, Hornellsville, Elmira, Boston, Philadelphia, Baltimore, and Albany rates, see current Erie Despatch eastbound billing instructions, except to points on Boston & Maine R. R. not shown on page 6, and points on New York, New Haven & Hartford R. R., New England R. R., and Philadelphia, Reading & New England R. R., to which points Boston rates WILL NOT APPLY.

The words "will not apply" are printed in large, conspicuous type in the tariff itself.

Furthermore, Mr. Witzel, local freight agent of the Baltimore & Ohio Railroad at Cleveland, Mr. Troescher, his chief clerk, and Mr. Laughlin, local freight agent of the

Erie Railroad at Cleveland, all testified that the Baltimore & Ohio had no working per cents out of Cleveland via the Erie Despatch or Erie Railroad; and that the Baltimore & Ohio tariff and the Erie Despatch billing instructions could not be used together on shipments from Cleveland. They also testified that there had never been any shipments to New England points at the Boston rates under this Baltimore & Ohio tariff. (Vol. 20, pp. 371–374, 382, 383.)

It is, however, shown by the evidence of these witnesses that the tariff of the Baltimore & Ohio in question not only named rates from Cleveland but also from Brooklyn, a suburban point near Cleveland, the rate from Brooklyn to Boston being the same as from Cleveland to Boston. Brooklyn is on the Baltimore & Ohio Railroad and its line extends thence to Cleveland proper, where connection is made with the Erie. It appears from the evidence that there were working per cents or divisions arranged between those two railroads by which shipments might be made from Brooklyn to Cleveland and thence east over the Erie Railroad. The defendants having failed in their contention that the rates named in the Baltimore & Ohio tariff applied from Cleveland proper, seek to maintain that the Boston rate of 24 cents applied from Brooklyn to points in New England, and that as the shipments would pass through Cleveland, a higher rate could not be charged from Cleveland. It is admitted that there are no refineries at Brooklyn and no oil can be carried from there, but defendants put in evidence to show that there is a low switching charge from Cleveland to Brooklyn, and therefore they maintain that shippers at Cleveland could in any case have sent oil to Brooklyn on this low charge and thence shipped it east at the Boston rate.

This position again seems to us clearly absurd. There is no contention that the Baltimore & Ohio could have applied the Boston rates to points on the Boston & Maine and Maine Central on shipments moving east over its own rails. Moreover, as we have already seen, the Erie Railroad would not apply such rates on shipments from Cleveland over its rails. To suggest, therefore, that the Baltimore & Ohio and Erie together would do what neither separately would or could do is an obvious absurdity. (See also Schindler's testimony to this effect, vol. 20, p. 423.)

We claim, therefore, that the Government's evidence to the effect that the New England railroads generally prior to 1906 failed and refused to prorate on oil with their western connections, although prorating on other commodities, is unaffected by the misleading, technical testimony of the defendants, and that the fact remains established that this failure to prorate was a substantial and serious discrimination against the independent refiners and in favor of the Standard Oil Company.

We have already shown that the resumption of prorating by the New England roads in 1906 took place only after the investigations by the Bureau of Corporations and the Interstate Commerce Commission. The result of this change was to materially increase the possibilities of competition in the oil business in New England. Mr. Boltz (vol. 5, p. 2036) testified that the business of independent concerns in that territory had materially increased. Mr. Willock, an independent refiner of Pittsburg, testified that as soon as the prorating arrangements were put into effect, his concern opened business in various New England points where previously it could do no business because of the excessive rates. He gave specific instances of marked increases in a previously very small business, and of new business acquired in places where previously he had none. Thus, to Waterbury, Conn., he shipped 25 cars during the six months from September, 1907, to February, 1908, as compared with 3 cars in the corresponding months of 1905 and 1906. (Vol. 5, pp. 2540, 2541.) Again, Mr. Brockway, an independent refiner of Warren, Pa., testified that, whereas his concern had previously ceased to make efforts to reach New England markets on account of the high freight rates, subsequent to the resumption of prorating it did a very considerable business there, amounting to over 380,000 gallons of oil in the short period intervening up to the date of his testimony. (Vol. 5, p. 2567.)

DISCRIMINATION AS BETWEEN WHITING AND INDEPENDENT REFINING POINTS IN OPEN RATES TO POINTS IN CENTRAL STATES.

It appears from the testimony that the Standard Oil Company's refinery at Whiting makes large shipments to points in Illinois, Indiana, Ohio, and Michigan. There is no independent refinery at Whiting or in that vicinity, but the inde-

pendent concerns which ship into this territory are located principally at Toledo, Cleveland, Findlay, and Marietta, Ohio, and points in northwestern Pennsylvania. The rates in the filed and published tariffs from Whiting into this territory—commonly designated as Central Freight Association Territory—were, particularly after January 1, 1900, and prior to January 1, 1906, relatively much lower than the rates from these independent refining points.

These discriminations in rates are illustrated by the tables in the petition (vol. A, pp. 89 to 96), the accuracy of which is testified to by Mr. Schindler. (Vol. 4, pp. 1740–1743.)

Probably the most conspicuous illustration of this discrimination is seen by comparing the rates from Whiting east to points on the Lake Shore & Michigan Southern Railroad with rates from Toledo west to points on the same line (vol. A, p. 89). The rate from Whiting to Toledo itself was 10 cents per hundred pounds, while from Toledo to Whiting it was 12 cents; and the rates to intermediate points were adjusted on a corresponding basis. Thus, from Whiting to La Porte, a distance of 42 miles, the rate was 4½ cents, while from Toledo to Adrian, a distance of 33 miles, the rate was 6½ cents.

There is obviously no justification for such a difference in rates in opposite directions over the same line of railroad, and it can be explained only as due to discrimination. Mr. Felton, of the Standard Oil Company, to be sure, sought to maintain that the rate from Whiting to Toledo had to be 10 cents, or at any rate could not exceed 11 cents; for the reason that Toledo was an intermediate point on a certain railway route between Whiting and Cincinnati, that the rate from Whiting to Cincinnati via this route as via others was 11 cents, and that consequently the rate to Toledo under the long and short haul clause of the interstate commerce act could not be higher. It is true that railroads having lines from Whiting to Toledo and from Toledo to Cincinnati were parties to the tariff naming the 11-cent rate, and could have carried oil under it, although there is no evidence that they ever did so. The same roads, namely, the Lake Shore & Michigan Southern and the Cincinnati, Hamilton & Dayton, could have participated in traffic moving in a much more

direct route from Whiting to Cincinnati without its passing through Toledo; and it was presumably with reference to handling business in this way that they were parties to the tariff. As the court well knows, the application of the long and short haul clause, even with respect to direct routes, has been greatly modified by the decisions of the courts; while it is clearly absurd to maintain that, on a route so indirect as that from Whiting by way of Toledo to Cincinnati, intermediate points can not take a higher rate than the terminal point. As a matter of fact, after 1906, when the Bureau of Corporations had begun its investigation, the railroads promptly raised the rate from Whiting to Toledo to 12 cents, the same as in the reverse direction. Mr. Felton claimed that the Government virtually forced the railroads to make this change by its criticism, and that the new rate was illegal under the long-and-short-haul clause; but the change was made several months before the Bureau of Corporations published its report on the subject, and there is no evidence whatever that pressure was brought on the railroads by the Government in any manner.

Moreover, even if this long-and-short-haul argument had any weight, there was no evidence whatever introduced to show why the rate from Toledo to Whiting should be more than 10 cents, when that was the rate from Whiting to Toledo; and Mr. Schindler, a railway expert, testified that he knew of no reason for such a difference. (Vol. 20, pp. 431, 432.)

The relative rates from Whiting on the one hand and from Toledo and Cleveland on the other hand to other points in Michigan were similarly discriminatory in favor of Whiting, as appears, for example, from the table in the petition (vol. A, p. 92) testified to by Mr. Schindler (vol. 4, p. 1742). Thus to Battle Creek, Detroit, Grand Rapids, Muskegon, and Saginaw the rates from Whiting were equivalent to from 0.68 of a cent to 1.04 cents per ton per mile, while the rates from Toledo ranged from 1.17 cents to 2.17 cents per ton per mile. Grand Rapids is a little further from Whiting than from Toledo, but the rate from Whiting was 9 cents as against 12 from Toledo. Although the rates per ton per mile from Pittsburg to some of these points are a little

lower than from Whiting, the rates were nevertheless discriminatory against Pittsburg, for the reason that it is the common and proper practice of railroads ordinarily to make decidedly lower rates per ton per mile on long hauls than on short hauls, and the distances from Pittsburg are very much greater than from Whiting.

Mr. Felton sought to maintain that because, according to his contention, the rate from Whiting to Toledo could not exceed 10 cents, this necessitated corresponding adjustments of the rate from Whiting to points in Michigan generally. But since, as we have seen, there was no reason whatever why the rate from Toledo to Whiting should be higher than from Whiting to Toledo, there is similarly no reason why the rates from Toledo to other points in the same general territory should have been relatively higher than from Whiting.

The table in the petition (vol. A, pp. 93–96) shows rates from Whiting in comparison with rates from Pittsburg, Toledo, and Cleveland to additional points in Michigan and also to points in Ohio, Indiana, and Illinois, and to Louisville, Ky. The court will observe that in practically every case the rates per ton per mile from Whiting are very much lower than from competing refining points. Take, for instance, Terre Haute, Ind. The rate per ton per mile from Whiting is 0.62 of a cent as against from 0.82 to 0.87 of a cent from the independent refining points, notwithstanding the fact that Whiting is more than 100 miles nearer to Terre Haute than the nearest of the independent refining points named, and on account of the shorter distance would normally take a higher rate per ton per mile than these places.

Mr. Felton sought to weaken the force of this testimony regarding discrimination as between Whiting and competitive refining points by showing that the Standard Oil Company shipped large quantities of oil to this same territory from other refineries as well as from Whiting, these refineries taking the same or substantially the same rate basis as the independent refineries.

Even so far as this is true it does not in any way lessen the significance of the fact that on the very large shipments which were made from Whiting these discriminations existed. It is of course natural that the Standard should sup-

ply each territory from the refinery which has the lowest absolute rates, even if taking the distances into consideration those rates are proportionately higher than from other refineries. For instance, while the defendants' exhibits, introduced by Mr. Felton, show that 3,770 cars were shipped from other Standard refineries into the southern peninsula of Michigan during 1905, as compared with 1,896 cars from Whiting (Defendants' Exhibit 139), it appears also (Defendants' Exhibit 141) that 30 per cent of all the oil shipped to Michigan was shipped to Detroit, and Detroit is so much nearer the Standard refinery at Lima than to that at Whiting that the shipments are naturally made chiefly from Lima, the rate being lower than from Whiting.

Mr. Felton sought further to combat the force of the evidence regarding the discrimination in favor of Whiting by introducing an exhibit (Defendants' Exhibit 142) comparing the rates from Toledo, an independent refinery point, with the rates from Lima, a Standard point. This exhibit covers points south and west of Lima in Ohio, Indiana, and Illinois, and shows that the rates from the two refining points were the same, although to many of the destinations the distance from Toledo is greater. Mr. Felton, however, admitted that the rates from Lima to points north of Toledo in Michigan were generally the same as the rates from Toledo, although the distances from Lima are greater. There is no contention on the part of the Government that there was a discrimination against Toledo in favor of Lima on these rates to Michigan; and there can be no contention on the part of the defendant that there was a discrimination against Lima in favor of Toledo on rates to points south and west of Lima. Toledo and Lima have always been treated by the railroads as in the same rate-making territory. (See Kallman, vol. 15, p. 2331.)

On or about January 1, 1906, the rate from Whiting to Toledo, which had been 10 cents as against 12 cents from Toledo to Whiting, was raised to 12 cents, equalizing the rates. (Felton, vol. 14, p. 1908.) Other changes in rates were also made at the same time which, however, are not set

forth in detail in the evidence. (Schindler, vol. 4, p. 1741.) These changes took place subsequent to the initiation of the investigation of railroad rates on oil by the Commissioner of Corporations, but before his report on the subject was published. On or about January 1, 1907, a still more general adjustment of rates on oil in Central Freight Association territory took place. This was after the publication of the report of the Commissioner of Corporations which called attention to the previous disparities in rates. These changes resulted in reducing the rates generally from independent refining points; and, together with the changes made about January, 1906, served on the other hand to advance the rates from Whiting very generally. (Boltz, vol. 5, p. 2049.)

Mr. Boltz introduced tables (Petitioners' Exhibits 655 and 656) showing the new oil rates from Pittsburg, Oil City, Cleveland, Toledo, Marietta, and Findlay after this change of 1907, as compared with those previously in existence. The rates from Pittsburg were reduced, on the average, 12 per cent; from Oil City, 16 per cent; from Cleveland, 7 per cent; from Toledo, 7½ per cent; from Marietta, 13½ per cent, and from Findlay, 4½ per cent.

These changes of 1906 and 1907 in fact substantially did away with all discriminations as between Whiting and independent refineries on shipments into Central Freight Association territory. Rates in general from all points of origin were fixed on the basis of 90 per cent of fifth class, and since class rates are ordinarily based substantially on relative distances, this adjustment of the oil rates made them also substantially equal for equal distances from different refining points. (Boltz, vol. 5, p. 2048.)

The defendants claim that the rates in effect from Whiting and from independent refining points, respectively, prior to these changes of 1906 and 1907 were rates established by the railroads without the connivance or demand of the Standard Oil Company. We submit it to the court as another remarkable coincidence that all these rates should have been more favorable to the Standard than to its competitors.

MISCELLANEOUS DISCRIMINATIONS.

DISCRIMINATIONS AGAINST INDEPENDENT REFINERIES THROUGH FAILURE OF RAILROADS TO PROBATE ON SHIPMENTS TO PACIFIC COAST POINTS.

For many years prior to 1907 another important discrimination in the open published rates on oil existed by reason of the failure of the railroads to prorate on oil shipments from independent refining points east of Chicago to Pacific coast points. The effect of this failure to prorate was to make the rates from these independent refining points much higher than from Whiting, the Standard's great refining point, near Chicago, although on commodities generally the same rates applied from eastern points as from Whiting and Chicago.

It appears that the Standard Oil Company completed its refinery, so as to commence shipping oil from Whiting, about December, 1890. This was the first refinery of the Standard west of Cleveland. There were at that time and for many years afterwards no independent refineries at Chicago or west of Toledo (except perhaps some small concerns in California). Prior to May 2, 1891, the rates on oil, the same as on all other principal products, from Toledo, Cleveland, Pittsburg, and similar points to the principal Pacific coast points, such as San Francisco, Sacramento, Los Angeles, San Diego, Portland, Seattle, and other places, were the same as the rates from Chicago. This was accomplished by a prorating arrangement between the eastern lines and the transcontinental lines, Chicago, Peoria, and St. Louis being the principal junction points. This system of making rates uniform from eastern points of origin to the Pacific coast has long existed, and does to-day, on the principal products shipped to the West. (Schindler, vol. 4, p. 1694.)

On May 2, 1891 (Petitioners' Exhibit 587), the rates on oil were changed, and the rate from Chicago was made 78½ cents, from Toledo 87½ cents, from Cleveland 96 cents, and from Pittsburg 96 cents. Although these were joint through rates the rates from Toledo, Cleveland, and Pittsburg were practically equal to the sum of the local rates, and after July 16, 1894, the roads ceased to prorate, so that shipments from these refining points had to pay the local rate to Chicago, Peoria, or St. Louis, and thence the local rate to the

Pacific coast points. This system of refusing to prorate existed down until May 29, 1907, after the investigation of the Department of Commerce and Labor and after a complaint by Mr. Boltz, the traffic manager of the National Petroleum Association, an organization of independent refiners. (Schindler, vol. 4, pp. 1689, 1693; Boltz, vol. 5, pp. 2050–51; and Petitioners' Exhibit 587.)

On August 3, 1906, Mr. Boltz, traffic representative of the National Petroleum Association, applied to the transcontinental lines for a restoration of through rates from eastern refining points to the Pacific coast, but this application was denied, and it was only after the filing of a formal complaint with the Interstate Commerce Commission, which was set for hearing on May 21, 1907, that the railroads agreed to restore the prorating, which they did, to take effect May 29, 1907. The rates were then made 90 cents from Chicago, Toledo, Cleveland, Pittsburg, and other eastern points generally.

Although for several years past the Standard Oil Company has supplied the Pacific coast chiefly from refineries in California, the discrimination in rates as between Whiting and eastern refining points above mentioned had for years previously been a very important one, owing to the fact that the Standard Oil Company did at that time supply the Pacific coast chiefly from Whiting.

Mr. Felton, traffic manager of the Standard Oil Company, says that so far as his investigations show he can not find that the establishment of the Whiting refinery or the influence of the Standard Oil Company had anything to do with the cessation of prorating on oil shipments from eastern points to the Pacific coast. We submit that this evidence is of no value whatever, as Mr. Felton was not connected with the Standard Oil Company at that time.

Mr. Felton also sought to show that the change made in 1907, by which refining points east of Chicago were given the same rate as Chicago, was not really a benefit to the independent refineries as a whole or to the consumers on the Pacific coast, for the reason that at the same time that the rates from Chicago were advanced to the same basis as the rates from eastern refining points, the rates from the new independent refining districts in Kansas, Oklahoma, and Texas, were also advanced to the same amount. Even

thus, however, the discrimination in favor of the Standard Oil Company was done away with. Moreover, this is clearly no defense of the injustice of the discrimination which had previously existed by reason of the failure to prorate on oil at a time when there were no independent refineries west of Toledo. The independent refineries in Kansas and Oklahoma have all been built since 1904.

FAILURE TO PRORATE ON SHIPMENTS TO MISSISSIPPI RIVER POINTS ABOVE ST. LOUIS.

For some time prior to the construction of the Whiting refinery in 1890 the railroads used to prorate on oil, as well as all other commodities shipped from such points as Toledo, Cleveland, and Pittsburg to Mississippi River points between St. Louis and LaCrosse, such as East Dubuque, Rock Island, etc. This prorating meant that the through rates were less than the sum of the local rates from the points of origin to Chicago plus the local rates from Chicago. It affected the rates not only to those points but to the territory west from them, particularly through Iowa. (Schindler, vol. 4, p. 1690; Boltz, vol. 5, pp. 2041 and 2042.)

On October 21, 1889, when the Whiting refinery of the Standard Oil Company was under construction, the roads ceased to prorate on oil and charged the local rates—that is to say, the eastern lines charged the local rates to Chicago and Peoria and the western lines the local rates from those points to Mississippi River points. This had the effect of increasing the rates from Cleveland, Oil City, and other eastern points by from 7½ to 10 cents a hundred. This condition existed during all the time until January 1, 1907, when the railroads resumed prorating, which caused a reduction in the rates by from 6½ to 14½ cents a hundred. (Schindler, vol. 4, pp. 1691 and 1692; Boltz, vol. 5, pp. 2043 and 2044.)

Meantime, however, this refusal to prorate had put the independent refiners at an abnormal disadvantage in competition with the Standard Oil Company shipping from Whiting. Had the railroads made through rates from the eastern refining points on oil, as they did on other commodities, the difference between what the Standard Oil Company had to pay and what the competing refiners had to pay would have been much less than it actually was.

DISCRIMINATORY ADVANCE IN RATE FROM THE KANSAS OIL FIELD TO KANSAS CITY.

Another instance of the manner in which the rates of railroad companies were adjusted for the convenience of the Standard Oil Company appeared in 1904 in connection with the tariffs from the oil-producing regions in Kansas to Kansas City. Prior to August, 1904, the Standard Oil Company had no pipe line from this field in southeastern Kansas to Kansas City. It had a refinery in Neodesha, Kans., located within the field itself, and shipped oil by rail from that refinery to Kansas City. In August the company completed a pipe line from this field to Sugar Creek, Mo., a town near Kansas City, where it established a refinery. The Standard, therefore, no longer had occasion to make any considerable shipments from Neodesha or from the Kansas oil field to Kansas City, since it could supply that point with oil from the Sugar Creek refinery. (Leland, vol. 3, p. 1193.)

Prior to the opening of this pipe line, for more than a year the railroad rate from Neodesha, and in fact from the oil fields generally, to Kansas City had been 10 cents per 100 pounds. Very shortly before the completion of the pipe line this rate was raised to 17 cents. (Robertson, vol. 3, p. 1183; Knapp, *ibid*, p. 1235; Koontz, *ibid*, 1249.) The result, of course, was that the producers of crude oil who might desire to ship their oil to Kansas City for use as fuel, as well as competing refiners wishing to ship to Kansas City, were put to a great disadvantage, as compared with the Standard Oil Company, which transported its crude oil to the near vicinity of Kansas City through a pipe line, for it is already shown that the cost of pipe line transportation in general is far lower than railroad rates.

Various railroad officers attempt to give explanations of this increase in rates, claiming that it had nothing to do with the opening of the Standard's pipe line, and even claiming that other changes made at the same time and with which this change was logically connected were seriously opposed by the Standard and were very injurious to its interests. But it is so obvious that the Standard Oil Company was materially benefited by the increase in this rate at the time of the opening of this pipe line that these explanations, which are themselves conflicting, do not appear to us convincing.

DISCRIMINATION IN ARBITRARY WEIGHTS APPLIED BY RAILROADS ON CRUDE OIL AND FUEL OIL.

A change with respect to the arbitrary weights fixed by the railroads for shipments of petroleum and its products from the Mid-Continent field and in adjacent territory was made in 1902, which was very beneficial to the Standard and injurious to the producers of crude oil. The price paid for crude oil by the Standard Oil Company in the Kansas or Mid-Continent field has been greatly reduced during recent years, and consequently producers have sought to dispose of it as fuel instead of selling it to the Standard Oil Company for refining purposes. Crude oil as fuel comes in direct competition with the residuum product of refining, which is commonly called fuel oil or gas oil. (Knapp, vol. 3, p. 1236; Leland, vol. 15, p. 2217.)

For many years it has been the custom of railroads to establish so-called arbitrary weights for use in connection with the transportation of petroleum. That is, instead of actually weighing the product, the quantity in gallons has been ascertained, and a gallon has been arbitrarily assumed to weigh a certain number of pounds. Prior to about 1902, the arbitrary weight thus used by railroads on shipments in and from the Mid-Continent oil field was 6.4 pounds per gallon on both crude oil and its products. At that time the railroads changed their practice in this regard and fixed the arbitrary weight to be applied on shipments of crude oil at 7.4 pounds, while leaving the weight of 6.4 pounds to be applied on all products of petroleum, including fuel oil and gas oil. (Knapp, vol. 3, p. 1233; Leland, vol. 15, p. 2218.) It appears from the testimony (vol. 3, p. 1236) that the actual weight of fuel oil and gas oil per gallon is about the same as that of crude oil, so that there was no justification for any difference in the arbitrary weights as between these two commodities. Yet, as a matter of fact, for every gallon of crude oil shipped, the shipper would have to pay freight on 7.4 pounds, while for every gallon of fuel oil or gas oil he would have to pay on only 6.4 pounds. This meant practically that the rate on crude oil was over 16 per cent higher than the rate on gas oil or fuel oil, the product of refineries. The Standard Oil Company, as the owner of great refineries at Neodesha and Sugar Creek, could thus,

on the basis of a very much lower cost of transportation, supply the same or substantially the same trade as the producers of crude oil were seeking to supply.

SECRET RATES AND REBATES IN CALIFORNIA.

The Government has not sought in general to adduce testimony with regard to the rates for the transportation of oil in strictly intrastate traffic, although it is evident that if the Standard Oil Company obtained discriminating rates and rebates on such shipments generally it would tend to give it a monopoly not only of intrastate but of interstate commerce.

Some testimony was, however, introduced with regard to secret and discriminatory rates in California. One of these rates on which exceedingly heavy shipments were made was from Redondo to Los Angeles, Redondo being a seaport about 20 miles from Los Angeles. These shipments were made over the Santa Fe Railroad, and some of them went to points in Arizona, being thus interstate shipments, the secret rate covering that part of the haul as far as Los Angeles.

The Santa Fe Railroad, at the time the shipments in question were made, had no published commodity rate on refined oil specifically from Redondo to Los Angeles, and in the absence of such special commodity rate, under the Western Classification, the fifth-class rate would apply. The fifth-class rate from January 29, 1902, until after the time of the shipments covered by the testimony was 10 cents per 100 pounds between these two points. (Durand, vol. 5, 2075 and 2076.) The Santa Fe Railroad did, however, have a published commodity rate on crude oil from Redondo to Los Angeles, filed with the Interstate Commerce Commission. This rate, which was made effective February 20, 1904, was 10 cents per barrel of 42 gallons. (Ibid., p. 2079.)

From about the 1st of June, 1904, the Standard Oil Company made shipments of both refined and crude oil from Redondo to Los Angeles at 7½ cents per barrel, a reduction of 2½ cents per barrel from the published tariff rate on crude oil, and a much greater reduction from the published tariff rate of 10 cents per 100 pounds on refined oil, which would be equivalent to about 27 cents per barrel on oil in bulk. Prior to about May or June, 1904, for some time the Stand-

ard paid only 4 cents per 100 pounds from Redondo to Los Angeles. (Ibid., pp. 2078–2079.)

These rates of 4 cents per 100 pounds and 7½ cents per barrel were arranged by means of actual rebates, the published rates being collected in the first instance and the difference being subsequently refunded to the Standard.

Mr. Durand testified to a claim dated May, 1904, made by the Standard Oil Company against the Santa Fe Railroad for a refund of charges on refined oil so as to reduce the rate from 10 cents to 4 cents. (Ibid., p. 2078.) This was, of course, nothing less than a rebate, indicating that the 10-cent rate had been collected and the balance refunded. The destination of at least one of the cars covered by this claim was Clifton, Ariz., so that practically this rebate, although covering only that part of the haul between Redondo and Los Angeles, was a rebate on interstate shipments.

Mr. Durand also testified that later in 1904 claims were presented covering other shipments of refined oil from Redondo to Los Angeles and reducing the charge from 10 cents per 100 pounds to 7½ cents per barrel (2.79 cents per 100 pounds). Here again at least one of the cars was destined to Clifton, Ariz. (Vol. 5, p. 2079.)

Mr. Schindler testified to the examination of a large number of claims for rebates made by the Standard Oil Company against the Santa Fe Railroad in order to secure the benefit of this special rate of 7½ cents per barrel from Redondo to Los Angeles; they covered the period from March, 1904, to October, 1904, and aggregated $4,491.99. These claims, with a single exception, relate to crude oil, the tariff rate on which during this period was 10 cents per barrel, while the claims were for a reduction of 7½ cents per barrel. These claims are distinct from the ones testified to by Mr. Durand.

It appears from the testimony of Mr. Earl that the only authority for this rate of 7½ cents per 100 pounds was what the railroad designated as a "letter special," not filed with the Interstate Commerce Commission. A copy of one of these letters special, which was dated September 18, 1894, was introduced in evidence. (Petitioner's Exhibit 669.) It is simply in the form of a letter addressed to the agents at Los Angeles and Redondo, and to the auditor, instructing them to apply that rate. This by its very face shows it was

in no sense a published tariff, and the attempt of certain witnesses to defend these rebates as mere adjustment of overcharges is obviously absurd. There was no reason, except the desire to conceal the actual rate, why the lower rate should not have been collected in the first instance. The practice continued so long that the collection of the higher rate could not have been due to error.

Another secret rate employed by the Standard Oil Company in California, which was also handled by means of rebates, was on shipments from Redondo to San Diego over the Santa Fe Railroad. The commodity rate on crude oil as published and filed with the Interstate Commerce Commission was, during the period of the shipments in question, made up of the rate of 10 cents per barrel of 42 gallons from Redondo to Los Angeles, above mentioned, plus a rate from Los Angeles to San Diego of $2.60 per ton, or 13 cents per 100 pounds, or the equivalent of about 35 cents per barrel, giving a total of 45 cents per barrel from Redondo to San Diego. (Durand, vol. 5, pp. 2079–2080.)

Lower secret rates were, however, made to the Standard, the published rate being collected and the difference rebated. Mr. Schindler testified to the examination of numerous claims of the Pacific Coast Oil Company against the Santa Fe Railroad for refund of charges on crude oil shipped from Redondo to San Diego, reducing the charge from the published rate of 45 cents to 20 cents per barrel. These claims covered the period from May to October, 1904, and aggregated $6,869.22. (Schindler, vol. 5, p. 2085.)

THE GENERAL WITHDRAWAL OF SECRET RATES AND CHANGES IN PUBLISHED RATES FROM 1905 TO 1907, FOLLOWING THE GOVERNMENT'S INVESTIGATIONS, ARE EVIDENCE OF THE PREVIOUS DISCRIMINATION.

We have from time to time, in discussing the separate rate situations, called attention to the fact that practically every secret and unfiled rate formerly used by the Standard Oil Company was withdrawn at some time during the years 1905 to 1907; and that extensive changes were made in the published rates about the same time, which changes tended to equalize the cost of transportation as between Standard and independent refining points. We now wish to emphasize the

significance of these numerous changes, all of which were made only after the secret rates or the discriminations in open rates had been disclosed by the investigations of the Bureau of Corporations or other branches of the Government, or after criminal proceedings had been instituted. The fact that every one of the unfiled rates which had formerly been used on interstate shipments by the Standard Oil Company was withdrawn, and duly filed rates thereafter applied, is itself an evidence that the railroads recognized the illegality of their previous procedure; and the fact that the filed rates thus put in effect on Standard shipments were in all cases decidedly higher than the previous rates was practically an admission by the railroads that the previous rates had been unfair and discriminatory as well as technically illegal. The changes in the open published rates which were made about the same time, including the resumption of prorating to New England, to the Pacific coast and to Mississippi River points, and the general readjustment of rates in Central Freight Association territory, all of which changes tended to reduce the cost of transportation from independent refining points and some of which increased the cost of transportation from Standard refining points, were also tantamount to an admission by the railroads that the previously published rates had been unjust and discriminatory.

The following table briefly summarizes the changes which were made by the railroads in rates on oil subsequent to the Government's investigations, so far as evidence regarding such changes appears in the testimony. It should not be inferred from the absence of evidence of changes in other discriminatory rates that no such changes have been made, but the Government did not undertake to introduce evidence regarding every case. We invite the attention of the court particularly to the dates of the various changes. It will be remembered that the Bureau of Corporations began its investigation of railroad rates on oil during 1905 and published a report thereon in May, 1906, and that other investigations by the Interstate Commerce Commission were made in 1906, while the present case was instituted in November, 1906.

Changes in railroad rates on oil from 1905 to 1907 following investigations by the Bureau of Corporations and other Government investigations and proceedings.

Date of change.	Points of origin and destination.	Nature of change.	Reference to record.
Dec. 1, 1905	Whiting, Ind., to Evansville, Ind.	Unfiled 8¼-cent rate canceled; 11-cent filed rate thereafter applied.	Durand (vol. 4, p. 1538; Petitioner's Exhibit 523).
Dec. 11, 1905	Whiting to Grand Junction, Tenn., and thence to southern points.	13-cent rate to Grand Junction canceled; combination of published rates Whiting to Evansville and Evansville to destinations thereafter applied.	Durand (vol. 4, p. 1569).
June 23, 1905 and July 1, 1905.	Whiting to East St. Louis (three railroads).	Unfiled rate raised from 6 or 6¼ cents to 10 cents; 10-cent rate subsequently filed.	Durand (vol. 4, pp. 1613, 1629, 1637; Pet. Ex. 556).
May 21, 1906	St. Louis to Alexandria, La., for local delivery.	Mimeograph tariff of 25 cents canceled, leaving 30-cent conspicuously published rate in force.	Schindler (vol. 4, p. 1695).
Do	St. Louis to Alexandria for points beyond.	Mimeograph tariff of 15 cents to Alexandria, used with unfiled rates beyond Alexandria, canceled, leaving published through rates to final destinations in force.	Schindler (vol. 4, p. 1702).
Mar. 5, 1906	Olean, N. Y., to Rochester, N. Y.	Rate of 9 cents per barrel formerly applied on all shipments confined to unfinished petroleum refinery stock.	Petitioner's Exhibit 608.
May 29, 1906	Norwood, N. Y., to Burlington, Rutland, and Bellows Falls, Vt.	Rates of $23, $28, and $30 per tank car canceled, leaving only class rates in effect.	Schindler (vol. 4, p. 1724).

Changes in railroad rates on oil from 1905 to 1907 following investigations by the Bureau of Corporations and other Government investigations and proceedings—Continued.

Date of change.	Points of origin and destination.	Nature of change.	Reference to record.
Apr. 21, 1907.....	Rates on Central Vermont Railroad.	Published rate basis reduced, oil in carloads from third class to fifth class and in less than carloads from second class to third class; about same time certain special unfiled rates used by Standard from Burlington were cancelled.	Schindler (vol. 4, p. 1734); Ferguson (vol. 15, p 2378).
1906.....	From western independent refining points generally to New England generally.	Resumption of prorating on oil, applying to most New England points same rate as to Boston; average reduction to independent shippers about 11 cents per 100 pounds.	Schindler (vol. 4, pp. 1735–1737); Boltz (vol. 5, pp. 2034–2035); Petitioners' Exhibits 621–625.
1905 and 1906.....	Rates from western independent refining points generally to northern New York.	Establishment of prorating, resulting in application to most points of same rate as to Boston. Reduction generally from 33 cents to 23½ cents, later to 19 cents.	Westgate (vol. 6, pp. 2867–2879).
Jan. 1, 1906, and 1907.	Rates from independent refining points and from Whiting, Ind., to Central Freight Association territory generally.	General readjustment of published rates, applying uniformly 90 per cent of fifth-class rates on oil, thereby reducing rates from independent refining points and raising rates from Whiting.	Boltz (vol. 5, pp. 2040, 2045–2048); Petitioner's Exhibits 655–657; petition, pp. 154–161, verified by Schindler (vol. 4, pp. 1749–1742).
May 29, 1907.....	Rates from eastern refining points to Pacific coast.	Resumption of prorating, giving same rates from independent refining points such as Toledo and Pittsburg as from Whiting, instead of combination of local rates to Chicago and from Chicago to Pacific coast.	Schindler (vol. 4, p. 1689); Boltz (vol. 5, p. 2050); Petitioner's Exhibit 587.

July, 1906.....	Rates from eastern refining points generally to Mississippi River points, St. Louis to LaCrosse.	Resumption of prorating instead of application of sum of local rates; reducing rates from points east of Chicago, and consequently reducing disadvantage as compared with Whiting.	Schindler (vol. 4, pp. 1691–1693); Boltz (vol. 5, pp. 2038, 2044); Petitioner's Exhibit 588.

DISCRIMINATIONS IN OCEAN RATES ON LUBRICATING AND OTHER OILS TO SOUTH AFRICA.

The greater part of the oil shipped by the Standard Oil Company to foreign countries is shipped in the steamers and vessels of the Standard Oil Company. It does appear, however, that the Standard ships oil in cases and other containers by regular lines of steamers running to South African ports, such as Delagoa Bay, Cape Town, and a number of others, and that in this transportation it has written contracts whereby it gets its freight at just about one-half what the independents have to pay to the same lines. While this discrimination does not cover a very large amount of business, it is one of the most outrageous cases of a recent attempt to squeeze out competitors which has come to our attention.

The New York Lubricating Oil Company is a company in New York doing an independent business, of which Mr. Philip Harrison is the general manager. It appears from his testimony that he has been unable to obtain a lubricating business with any of the American railways. Having had some of them, by one inducement or another they have been taken away from him by the Galena Signal Oil Company, a Standard company. He testified that his company had, however, built up a nice business in South Africa, amounting to something like 3,500 tons per annum (vol. 2, pp. 498 and 499); that the principal competitor in this lubricating oil business was the Standard Oil Company, through its subsidiary corporations, the Vacuum Oil Company, the Borne-Scrymser Company, and the Colonial Oil Company; that he had been about ten years building up this business; that for many years he had enjoyed a freight rate of substantially 21s. per ton from New York to Delagoa Bay, and substantially corresponding rates to other points; that about September, 1905, the rate was advanced to 37s., and in November to 42s. 6d., or double the previous rate (vol. 2, p. 500). He further testified that this addition to the rate was a fair profit on the oil, equivalent to 2½ cents per gallon. As a result of this, his business decreased, and he was compelled to purchase of the Standard Oil Company in South Africa a large amount of oil to supply his customers, in order to keep the trade which he had built up (p. 502).

About June, 1907, Mr. Harrison heard that the Standard Oil Company was obtaining a rate of about 13s. He called upon Mr. Houtman, a representative of Barber & Co., agents of the African lines, who admitted that they were getting only about 17s. from the Standard Oil Company, and that the conditions were hard and anything he could do to help Mr. Harrison he would do (pp. 493 and 494). He suggested that Mr. Harrison write a letter to Barber & Co., which he did on June 6, 1907, protesting against these rates. This letter states many of the facts and will be found in volume 2, page 494, et seq. He never received any response to the letter, other than an acknowledgement of its receipt, and no change in the rates was made up to the time this testimony was taken, in the autumn of 1907.

Barber & Co. produced the contracts between the Standard Oil Company and these lines. (Petitioner's Exhibits 359–362.)

By the contract of 1904 (Exhibit 359) the American & African Line, one of the South African lines, agreed with the Colonial Oil Company, one of the Standard companies, for a rate on refined oil at 15 cents per case, which would be equivalent to about 13s. per ton. (Harrison, vol. 2, p. 501 et seq.) In March, 1906, contracts were made between the various African lines and the Colonial Oil Company, the Vacuum Oil Company, the Standard Oil Company of New York, and Borne-Scrymser Company, which contracts were for two years and named varying rates, among others a rate on lubricating oil separate from other refined oil. The rate on lubricating oil to Delagoa Bay was 10½ cents, which was equivalent to practically 17s. (Vol. 2, p. 501.) The rates on other refined oil were lower than this. It will be noted that the first contract was made about a year before Mr. Harrison's rates were first raised and provided for rates even lower than he was then getting; and this second contract was made just a few months after the second increase in rates to Mr. Harrison.

This second contract covered substantially all lines of steamships running to South Africa. We have given the rates to Delagoa Bay; the rates to other South African points were substantially the same.

This rate of 17s. did not include the landing charge, which Mr. Harrison says Mr. Houtman told him was 3s. to 4s.

Assuming it to be 4s., this would make the Standard Oil Company's rate 21s., or one-half the rate charged to Mr. Harrison, which latter rate included landing charges.

The rates on refined oil were lower than the rates on lubricating oil, and it is obvious that these would give a great advantage to the Standard over other shippers.

On cross-examination of Mr. Harrison the Standard Oil Company's counsel undertook to show that there was no law governing steamship shipments. It is true that the interstate commerce act does not authorize the commission to regulate steamship rates. It is equally true that the Sherman Act does apply to any conspiracy in restraint of trade or monopoly of commerce between the United States and foreign countries. (*Thomsen* v. *Union Castle Mail S. S. Co.*, U. S. C. C. A., 2d Cir., 166 Fed., 251.) Substantially this identical combination was declared void in that case. It will be noted that the Union Castle Steamship Company was one of the African lines named in the contracts of the Standard Oil Company giving them the rates herein referred to. (Petitioner's Exhibits 359 to 362, vol. 8, pp. 880–888.) If there ever was a clear case of conspiracy between the steamship lines and the Standard Oil Company to ruin the trade of a competitor this is such a case. It is further evidence of the fact that the Standard Oil Company is willing to resort to any method to crush a competitor which it believes is not within the criminal laws and where it hopes its officers can escape indictment and conviction.

MANY OF THE UNFILED AND UNPUBLISHED RATES WHICH THE TESTIMONY SHOWS WERE USED BY THE STANDARD OIL COMPANY IN THE TRANSPORTATION OF PETROLEUM NOT ONLY WERE DISCRIMINATORY AGAINST ITS COMPETITORS BUT WERE IN CLEAR VIOLATION OF THE LAW.

(1) THE USE ON INTERSTATE SHIPMENTS OF THE VARIOUS UNFILED AND UNPUBLISHED INTRASTATE RATES WAS IN VIOLATION OF THE INTERSTATE COMMERCE ACT.

It fully appears in the foregoing discussion that for years prior to 1905 the Standard Oil Company had been in the habit of shipping large quantities of oil in interstate commerce using on part of the haul local state rates not filed with the Interstate Commerce Commission, such rates being usually combined with interstate rates covering that part of the haul across state lines to make a through charge. These shipments were made on through bills of lading stating the origin of the shipment and its destination in some other State. The principal instances of this character were the use of unfiled rates between Chicago, Ill., and East St. Louis, Ill., on shipments from Whiting, Ind., to East St. Louis and to St. Louis, Mo.; the use of unfiled rates from Whiting, Ind., to Evansville, Ind., on shipments passing from Whiting through Illinois to Evansville, and also on shipments destined on through bills of lading to various points in the Southern States; the use of unfiled rates from Alexandria, La., to various points in the State of Louisiana on through shipments from St. Louis, Mo. (and neighboring points), to such destinations; the use of unfiled rates between Olean, N. Y., and Rochester, N. Y., and between Rochester, N. Y., and Norwood, N. Y., on through shipments from Olean to points in Vermont; the use of various unfiled rates from Burlington, Vt., to various other points in Vermont, on through shipments from Olean, N. Y., and from New London, Conn., to such destinations. The use of these unfiled rates in most cases was made when there existed lawful through interstate rates much higher than the rates actually

paid, while on one or two cases there were apparently no published through rates.

The only justification the defendants advance for using these rates was a custom among railroads, which various of their witnesses testified to, to use intrastate rates for interstate shipments up to the time of the passage of the Hepburn Act in 1906, shortly after which the Interstate Commerce Commission made an order requiring all such tariffs to be filed. We are aware that prior to 1902 and 1903, and in the case of the Standard Oil Company until 1905, when these discriminations were discovered by the Bureau of Corporations, there was a widespread custom among railroads to violate the law, both in this particular manner and also by direct rebates and otherwise. This can hardly make the practice legal, for it is apparent that there never was a time when the law and the orders of the commission did not require tariffs between points in the same State to be filed when used on interstate business. The Government introduced (Rec., vol. 20, p. 432) the orders of the Interstate Commerce Commission made from time to time. The first order was made shortly after the organization of the commission in 1888, and republished December 1, 1891, August 15, 1894, and in 1906. This order reads as follows:

> INTERSTATE COMMERCE COMMISSION,
> AUDITOR'S OFFICE,
> *Washington, February 13, 1888.*
>
> Roads located wholly in one State or Territory, which interchange freight or passenger traffic with connections to or from points outside of such State or Territory, on through tickets or bills of lading, should file tariffs covering such traffic with the commission.
>
> If such through rates are made by the addition of local rates to the rates of connecting roads, such local tariffs should be filed with the commission, together with a statement that through interstate rates are made by adding such local rates to the rates of the carrier (naming it) with which connection is made.
>
> If joint rates are made on any basis other than by the addition of the local rates to the through rates of connecting carriers, tariffs showing such rates should be filed with the commission covering all interstate business transacted thereunder.
>
> For the commission.
>
> C. C. MCCAIN, *Auditor.*

This was also published in the annual report of the commission for 1888, page 169. In the annual report of 1897, pages 89 and 90, the commission again said:

> In the absence of published through rates to certain points, it often happens that through rates are determined by adding to an interstate rate the local rate from a junction point located in the same State as the destination point. In such cases intrastate rates constitute a portion of the total charge on interstate traffic. Intrastate rates are not usually filed with the commission except when published in tariffs naming interstate rates, and in cases of the kind above referred to the commission is often unable to determine the through rates on interstate shipments. The commission entertains no doubt that when intrastate tariffs are used as part of interstate rates they come within the requirements of the act and should be filed with the commission.

The same rule of the commission also appears in volume 1 of the Interstate Commerce Reports published by the Lawyers' Cooperative Publishing Company, on page 9, and in volume 1 of the Interstate Commerce Commission Reports, on page 657.

Furthermore, on April 12, 1899, the commission decided a case, to which every one of these railroads which used such unfiled rates on interstate shipments for the Standard was a party, in which decision the commission held squarely that intrastate rates when used as a part of an interstate shipment must be filed with the Interstate Commerce Commission. (8 I. C. C. Rep., p. 185.) In closing the decision the commission said (p. 213):

> It is found in this case that various carriers engaged in the carriage of corn at combination rates from Illinois points to the seaboard had not filed with the commission the local rates in Illinois which they apply on that traffic in connection with through rates from Chicago or other market cities in Illinois; and special request had to be made by the commission for such rates before we could determine what rates were actually in effect from such originating points in Illinois to the seaboard. A similar practice of not filing state rates with the commission is followed by carriers in other parts of the country. When rates established to apply between points within a single State are applied as part of combination rates on transportation through different States, such state rates, as well as the interstate rates

with which they are combined, must be published at stations and filed with this commission as provided in section 6 of the act to regulate commerce.

It is impossible that the railroads or the Standard Oil Company, with its great traffic department, should not have known of this requirement.

Furthermore, the act itself is clear and distinct. Section 6 requires such tariffs to be filed. Some claim was made on cross-examination of witnesses that the Hepburn Act, of June 29, 1906, changed the law as to the filing of tariffs. We give section 6 of the old law, and the Hepburn Act, in so far as they refer to the filing of tariffs, in parallel columns:

OLD LAW.	HEPBURN ACT.
SEC. 6 (*as amended March 2, 1889, 25 Stat., 855*).	SEC. 6 (34 Stat., 586).
That every common carrier subject to the provisions of this Act shall	That every common carrier subject to the provisions of this Act shall
	file with the Commission created by this Act and
print and keep open to public inspection schedules showing	print and keep open to public inspection schedules showing
	all
the rates and fares and charges for the	the rates, fares, and charges for
transportation	transportation
	between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid, the separately established rates, fares, and charges applied to the through transportation.

OLD LAW—continued.	HEPBURN ACT—continued.
of passengers and property which any such common carrier has established and which are in force at the time upon its route.	
The schedules printed as aforesaid by any such common carrier shall plainly state the places	The schedules printed as aforesaid by any such common carrier shall plainly state the places
upon its railroad	
between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately	between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately
the	
	all
terminal charges	terminal charges,
	storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed
and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates	and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates,
and	
fares and charges.	fares, and charges,
	or the value of the service rendered to the passenger, shipper, or consignee.

The original act clearly required every railway doing an interstate business to file with the commission whatever tariffs were used on interstate shipments. Otherwise the result would be that no tariffs need be filed, as shipments could be made on a combination of local rates ending at the State lines, using through bills of lading. But the counsel will claim that the new clause in the Hepburn Act requiring joint tariffs to be filed, and providing that where no joint rates over a through route had been established the railroads

must publish and file the separately established rates and charges, was intended to cover the very point raised in this case. This is obviously absurd. The Hepburn Act for the first time gave the commission power to require railroads to make joint through rates, and this clause was inserted to enable it to enforce the publication of tariffs over established joint through routes, as well as the publication of separate rates where no joint route had been established, the latter provision being inserted to show clearly the continuance of the former law in that respect.

Recent court decisions involving some of the very transactions which we have proved in this case hold that these shipments were interstate. In the case of the *United States* v. *Standard Oil Company of Indiana*, relating to shipments from Whiting to East St. Louis and St. Louis over the Chicago & Alton, the trial court held the shipments interstate, and the Court of Appeals seems not to have questioned this. If the court deemed these not interstate shipments, it would have ended the entire case, and there was no need of sending it back for a retrial. In the cases of the *U. S.* v. *Vacuum Oil Co.* and *U. S.* v. *Standard Oil Co. of N. Y.* (153 Fed., 598; 158 Fed., 538), the case of *U. S.* v. *New York Central & Hudson River R. R.* (153 Fed., 630), and the case of *U. S.* v. *Pennsylvania Railroad* (153 Fed., 625), relating to shipments from Olean to Vermont points, on the unfiled rates from Olean to Rochester and from Rochester to Norwood, Rutland and Burlington, Judge Hazel sustained the indictments on demurrer. On trial of the cases the Standard Oil Co. of N. Y. was convicted and fined $20,000 in March, 1909, which case is now on appeal; and the New York Central Railroad was convicted and fined $15,000 in June, 1907. On appeal of the latter case the Court of Appeals for the Second Circuit held the shipments to be interstate, but reversed the case on jurisdictional grounds (166 Fed., 267).

The fact is that no railroad man of any intelligence ever believed he had a right to use a local unfiled rate on a through shipment from one State to another without the rate being filed with the Commission, for it has always been the law that where railroads accept goods for transportation from one State to another on through bills of lading, even though they

charge their local rates, the shipment is entirely interstate in character and comes under the jurisdiction of the Commission.

Cincinnati, New Orleans & Texas Pacific R. R. Co. v. *Interstate Commerce Commission* (162 U. S., 184).
The Daniel Ball (10 Wall., 565).

The case of *C., N. O. & T. P. R. R. Co.* v. *I. C. C.* is distinguished from the case of *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas* (204 U. S., 403). In that case the goods originally were transported from Kansas City to Texarkana and there delivered to the consignee. The bill of lading and the waybill both read from Kansas City to Texarkana, Tex., and there was a complete ending of the contract and act of transportation at that point. Some five days after the goods arrived at Texarkana the consignee rebilled them to Goldthwaite, Tex., making a new contract of shipment. The court said:

> It must further be remembered that no bill of lading was issued from Texarkana to Goldthwaite until after the arrival of the corn at Texarkana, the completion of the first contract for transportation, the acceptance and payment by the Hardin company.

In the case at bar in every shipment of oil where a local rate was used as a part of an interstate shipment the goods went forward upon a through bill of lading from the point of origin to a point in another State, and there was no such delivery to the consignee and new contract or reconsignment as existed in the foregoing case. It fully appears by the testimony of all the witnesses that the documents for the transportation of this oil were bills of lading showing the point of origin in one state and the destination in another; that a bill of lading is an instrument signed by the railroad company and delivered to the consignor, showing the consignor and consignee, and origin and destination of the freight; that it may or may not name a rate for any part or all of the haul; and that such a document, by the universal use among railroads as appeared from the testimony in this case, is a bill of lading and a contract for the through transportation.

In view of these decisions, the defendants' expert testimony that it was customary to use unfiled local rates for transpor-

tation of interstate business on through bills of lading is utterly valueless as a justification of the practice pursued.

(2) IN ALL CASES WE HAVE SHOWN EVIDENCE SUFFICIENT TO BRING NOTICE TO THE STANDARD OIL COMPANY, OR TO PUT IT UPON INQUIRY, AS TO THE ILLEGAL CHARACTER OF THE RATES USED.

We have pointed out from time to time, in connection with the discussion of the various individual rate situations, the detailed evidence going to show that the Standard Oil Company must have had knowledge of the existence of the legal rates and of the fact that the rates which it paid were not filed and were illegal.

We wish to emphasize the fact that the defendants put in no evidence seeking to show that they believed that the rates they actually used had been filed in the case of shipments from Whiting to Evansville, from Grand Junction to points in the south, from Whiting to East St. Louis over the Chicago & Alton and the Chicago, Burlington & Quincy, from Olean to Rochester, from Rochester to Norwood and other points in northern New York, from Burlington to points in Vermont, from Alexandria, Louisiana, to other points in Louisiana, or from Redondo, California, to Los Angeles, California. It was in fact perfectly clear with respect to the tariffs or other documents used as authority for these various shipments, that they could not have been filed. Numerous witnesses testified that wherever tariffs are filed with the Interstate Commerce Commission they contain what are known as I. C. C. numbers, and the documents on which the Standard made the shipments just mentioned in no case contained these numbers, and most of them were otherwise by their form clearly distinct from regular tariffs.

In some cases the bills presented to the Standard for freight charges showed that the shipments had been waybilled by the railroads at the published tariff rates, while lower rates were actually being collected. In other cases the goods were, with the knowledge of the Standard, shipped on blind waybills, so as not to show the rate. In several instances collections of freight charges were made through the auditor's office, which was an unusual procedure, sufficient alone to put the Standard on inquiry. We believe, in

fact, that the circumstances surrounding all these transactions are sufficient to show that the Standard knew that the rates it was using on interstate traffic were not filed with the Interstate Commerce Commission. The fact that practically the only defense made is the claim that the general practice of the railroads at the time was to use unfiled state tariffs on interstate shipments is itself significant.

Moreover, except with reference to the 18-cent rate from Whiting to East St. Louis (involved in the penal case tried at Chicago), no attempt was made by the defendants with respect to any of the shipments which we have above referred to, to contend that they did not have knowledge of the existence of the tariffs containing the legal rates from which the rates actually used were a departure. As to the 18-cent rate, their contention is merely that, being a class rate, they did not suppose that it was intended to apply to oil, but we have already shown that this contention was not well founded, and the defendants must have known it was not well founded.

Finally, we wish to call the attention of the court to the fact that the Standard Oil Company, in making use of the rates which it has used, is not in the position of a small and ignorant shipper, who might through error and oversight ship on illegal rates. The Standard Oil Company is one of the largest shippers in the country. The freight charges which it pays amount to many millions of dollars annually, and it is in fact by reason of its enormous freight shipments that it is able to get the discriminatory rates which we have described. Because of the great importance to it of railroad transportation the Standard Oil Company maintains an elaborate organization to take charge of its traffic, to keep track of rates, and to secure rates. Mr. Felton testified (vol. 14, pp. 1835–45) that he is the head of the traffic department of the Standard Oil Company, and that at his office in New York he has at present about 32 men whose business it is to file, index, and sift the great mass of railroad tariffs received from all over the United States. He testified that it was his own duty to consult with railroad officers all over the country in relation to the fixing of freight rates and for the purpose of getting the best rates possible. He stated further that the subsidiary companies of the Standard Oil Company of New Jersey also have traffic departments; that Mr. Bogardus has

charge of the traffic of the Standard Oil Company of Indiana and has eight or ten clerks looking after shipments, tariffs, etc., and that he keeps files of tariffs in his office; that Mr. Charles Van Overbeke has a similar position with the Standard Oil Company of Kentucky and keeps tariff files. All this evidence goes to show clearly that the Standard Oil Company was in a position to possess the fullest and most complete knowledge of all legally filed tariffs, as well as knowledge of the fact that the tariffs on which a large volume of its shipments were made were not filed and were not legal tariffs.

It may be claimed that there must be evidence that the various Standard companies had knowledge of the illegality of the several rates used.

We submit that it can not be possible that in a case under the interstate commerce act the rule should be different than it would be in an ordinary criminal case where guilty knowledge is a necessary ingredient of the offense. In those cases, actual knowledge is not necessary to be shown by the Government, but circumstances which would tend to prove knowledge. *Bonker* v. *People* (37 Mich., 4), where the court said:

> No doubt where guilty knowledge is an ingredient in the offense the knowledge must be found, but actual, positive, knowledge is not usually required. In many cases to require this would be to nullify the penal law.

See also *U. S.* v. *Houghton* (14 Fed. Rep., 544, 547); *U. S.* v. *Thompson* (12 Fed. Rep., 245, 248); *The Lulu* (10 Wall., 192, 201–2). In the *Armour Packing Case* (209 U. S., 56, 72) the court ruled that the interstate commerce act falls within the class of criminal statutes in the application of which it is not necessary to show an intent involving turpitude or moral wrong.

It can not be possible that a shipper like the Standard Oil Company, having a large traffic department, with able and experienced men, can willfully close its eyes to circumstances which point with such conclusive force to illegality, and claim that it did not know the legal rates or that the rates it used were not filed. To do this would nullify the interstate commerce act, and would prohibit any conviction ever being made in a case of this kind.

VI.

MONOPOLY OF THE TRADE WITH RAILROADS IN LUBRICATING OILS.

While the Standard Oil Company through its various subsidiary corporations does, as we have seen, 85 to 90 per cent of the general oil business throughout the country, it is a significant fact that it controls practically all the trade in lubricating oils for railroad rolling stock. Mr. C. C. Steinbrenner, auditor of the railway department of the Galena-Signal Oil Company, testified that in his opinion the Galena-Signal Oil Company has about 95 per cent of this business. However, he identified a letter from Charles Miller, president of the Galena-Signal Oil Company, in which Mr. Miller stated that his company was supplying 97½ per cent of this trade in the United States, Mexico, and Canada. In fact, Mr. Steinbrenner could name only one railroad in the United States which was purchasing its lubricating oils from any other company at the time of his testimony; and this road was the Tidewater Railway (Virginian Railway Company), which was then controlled by the defendant, H. H. Rogers, vice-president of the Standard Oil Company. (Vol. 1, pp. 412–416.)

This railroad trade of the Standard combination is all handled directly by the Galena-Signal Oil Company, except within the territory of the Waters Pierce Oil Company. This last company supplies the railroads in its territory with the Galena oils under contracts of the same form as those made by the Galena. The Waters Pierce practically acts merely as agent for the Galena, and receives a commission on the gallonage handled. (Vol. 1, p. 413; vol. 3, pp. 1470–1472, Petitioner's Exhibit 518.)

The Galena-Signal Oil Company was formed in 1901 by a consolidation of the Galena Oil Company and the Signal Oil Company, whose business it continued. Its capital stock is: Preferred, $2,000,000; common, $8,000,000, and of this the Standard Oil Company of New Jersey owns $1,487,500 of pre-

ferred and $5,592,000 of common stock, or 74 per cent of the preferred stock and 70 per cent of the common stock, respectively. (Petitioner's Exhibits 1 and 31A.) Prior to 1901 the Standard had an equivalent interest in the Galena Oil Company and the Signal Oil Company; and prior to 1899 the trustees of the Standard Oil Trust had the same interest in these two companies.

EXCESSIVE PROFITS OF THE GALENA-SIGNAL OIL COMPANY.

The Galena's monopoly is evidenced by its enormous earnings. During 1906 its profits were $2,803,056.44.[a] Of its capital stock of $10,000,000 at least $7,500,000 admittedly represents nothing but good will. (Petitioner's Exhibit 274B.) On the remainder of the capital stock, the profit for 1906 was 112 per cent. A very conservative consideration of the balance sheet for that year shows about the same per cent of profit on the amount of capital in use in the company's business. In the statement of assets for December 31, 1906, "Notes and accounts receivable" are shown at $4,046,283.98. This account is made up entirely of charges against purchasers at the invoice prices of the company's products. (Vol. 3, pp. 1469 and 1470, and Petitioner's Exhibit 517.) Only part of it is properly an asset, since it includes several hundred thousand dollars of refunds to be made to customers. Even of that remainder which is a true asset, only a part is capital invested. The investment is merely the cost of manufacture of the lubricants, while the "Notes and accounts receivable" include a very large element of profit.

The cost of manufacture alone is capital in use, on which profit should be calculated. As the company has sold its products to some purchasers at less than half the invoice prices for a long period of years, it is entirely proper for present purposes to take only one-half of the notes and accounts receivable as representing actual investment. From the total capital in use, including that indicated by notes and accounts receivable, must be deducted the notes and accounts payable, in order to obtain the net capital in use.

[a] In Petitioner's Exhibit 274B the profit is given as $2,749,036.63; but to this must be added the $54,019.81 shown as good will charged off.

Plant investment (including office building)		$530,155.84
Interest in other companies and properties		73,626.09
Cash		60,165.21
		663,947.14
Merchandise		820,670.24
One-half of notes and accounts receivable		2,023,141.99
		3,507,759.37
Less notes and accounts payable		845,333.06
Net capital in use		2,662,426.31

On this net investment of $2,662,426.31 the company made a profit during 1906 of $2,803,056.44, or 105 per cent. It is important to note that of these assets only $530,155.84 was a permanent investment in the plant and office building. Petitioner's Exhibit 274A shows that for the last six months of 1904 the rate of profit on the investment was about the same, and Petitioner's Exhibit 12A shows that the relation of profits to net assets was about the same from 1902 to 1905 as in 1906. This excessive profit is very good evidence of monopoly. There certainly can not be much risk in the business of selling oil to the railroads of this country.

FORM OF CONTRACTS AND SETTLEMENTS.

This trade with railroad companies is held under contracts running from one to five years—usually either three or five years. The contracts are nearly all of the same general character (see Petitioner's Exhibit 118F, and vol. 1, p. 417). The two chief factors in them are the invoice prices per gallon of the lubricants, and the mileage guaranties on the three services, i. e., that the cost shall not exceed so much per 1,000 miles run by locomotives, passenger cars, and freight cars, respectively. The invoice price of each lubricant is the same to all railroads. Some differences appear in the contracts and in the settlement sheets with different railroads, owing to the two facts that some roads purchase the oil in bulk, while others purchase it in barrels, and that the points of delivery to some roads are beyond the region in which the deliveries are made at the regular price; but in all instances the addition to the regular invoice price in bulk is intended to and does merely cover the charge for the containers or for the extra freight cost of delivering

beyond the free-delivery territory. (Vol. 1, pp. 417–419.) So far as the containers are concerned, the railroads may return these and receive a refund of the additional amount charged.

The mileage guaranties are made upon the three services separately, with the provision, however, that in settling for the contract year the total guaranteed cost on the three services must be placed against the invoice cost of all lubricants used in the three. (Vol. 1, p. 422, and Petitioner's Exhibit 118F.) Consequently the three guaranties must be considered together. In the settlement for the contract year the total invoice cost is computed on the basis of the number of gallons of each lubricant used and the invoice price per gallon thereof, and the guaranteed cost in each service is computed by multiplying the number of miles run by the guaranty, and the sum of the guaranteed costs in the three services is the total guaranteed cost. The total invoice cost is the amount paid by the railroad company, unless the total guaranteed cost is a smaller amount, in which case the latter is the amount paid. The invoice prices therefore establish a uniform maximum amount, but the actual payment by any railroad company may be any amount less than this, as determined by the guaranties.

Under the terms of the contract the railroad company purchases the lubricants at the invoice prices and receives a refund of the difference between the total invoice cost and the total guaranteed cost.

To illustrate this, the contract with the Baltimore and Ohio Railroad (Petitioner's Exhibit 118F) provides that the lubricants shall be purchased in bulk at the following prices: Valve oil, 48 cents; engine oil, 28 cents; coach oil, 33 cents, and car oil, 18 cents per gallon. In wooden barrels the price per gallon is 2 cents higher, but this additional amount will be refunded on the return of the barrels, and it must be deducted from the invoice cost before computing any refund under the guaranties (sec. 13 of Petitioner's Exhibit 118F). The oil company guarantees that at these invoice prices per gallon the cost to the railroad company shall not exceed $1.75 per 1,000 miles run by locomotives, 10 cents per 1,000 miles run by passenger cars, and 7 cents per 1,000 miles run by

freight cars. The settlement under this contract for the year ended June 30, 1906, is shown in Petitioner's Exhibit 409. This exhibit shows the gallonage of each lubricant used during this contract year and the charge therefor at the invoice price. From the total invoice cost as thus computed is deducted the credit for empty barrels, and the net charge against the railroad company for all lubricants used in the three services at the invoice prices is $212,743.24.[a] The total number of miles run in each service is shown, and these amounts are multiplied by their respective guaranties, giving a guaranteed cost of $102,450.25 in the locomotive service, $6,147.69 in the passenger-car service, and $48,420.67 in the freight-car service. The sum of these, $157,018.61, is the total guaranteed cost, and it is this amount which is compared with the total invoice cost to determine the amount of the refund, if any. In this case the refund is $55,724.63, or 26.2 per cent of the invoice cost.

EXCESSIVE PRICES CHARGED TO MOST RAILROADS.

The defendants were asked to produce the settlement sheets of the past ten years with 65 railroads. As the invoice prices are the same to all, the relative charges for the oils to the different roads may be compared by computing the per cent which the actual payment made by each was of the total invoice cost of the lubricants used by it. In the following table the figures are for the contract year ended in 1906. The first column shows the names of the 65 railroad companies; the second, the total invoice cost of all lubricants used on the rolling stock; the third, the actual amount paid by the railroad company; the fourth, the per cent the payment was of the invoice cost; the fifth, sixth, and seventh columns, the actual price paid per gallon. The actual prices paid per gallon, as shown in this table, are computed by multiplying the invoice price of each lubricant by the per cent of the total invoice cost which the railroad company paid during that year. For instance, the Pennsylvania Company under its mileage guaranties paid only 36.8 per cent of the invoice cost of all lubricants used. The invoice price of valve oil

[a] The item "Credit, by adjustment, $860.95," need not be considered, as it merely covers some error or similar adjustment.

is 48 cents, and 36.8 per cent of this price is 17.7 cents per gallon. The quantities of the lubricants used multiplied by these actual prices paid per gallon would give the total payment made by the railroad. For brevity, the actual price paid for coach oil has been omitted from this table, as most railroads use car oil on both passenger and freight cars. There are also some other lubricants used, such as rod cup grease, but these are comparatively unimportant. The actual prices paid for these other lubricants might be computed in the same manner as those of the principal lubricants, but the figures shown for valve, engine, and car oils are sufficient for purposes of comparison. All lubricants are included in the columns showing total invoice cost and amounts paid by the railroads.

The railroads are ranked in the order of increasing price paid. These 65 railroads cover a very large proportion of the railroad mileage of the country, and a still larger proportion of the lubricating business, as the roads having the heaviest traffic are practically all included.

Relative prices paid for lubricants by 65 railroads, 1906.

Railroad.	Invoice cost of all lubricants used.	Amount paid by the railroad.	Per cent of invoice cost paid.	Price paid per gallon.			End of the contract year in 1906.	Petitioner's Exhibit No.
				Valve oil.	Engine oil.	Car oil.		
				Cents.	*Cents.*	*Cents.*		
Pennsylvania Company	$169,231.42	$62,310.23	36.8	17.7	10.3	6.6	Feb. 28	459
Pittsburgh, Cincinnati, Chicago and St. Louis.	132,744.62	52,496.75	39.5	19.0	11.1	7.1	Feb. 28	460
Central of Georgia [a]	29,297.33	14,170.45	48.4	23.2	13.6	8.7	(b)	413
Pennsylvania lines east of Pittsburg	649,549.64	c336,985.01	51.9	24.9	14.5	9.3	Dec. 31	458
Southern Pacific, Pacific System [a]	127,815.42	72,816.43	57.0	27.4	16.0	10.3	Mar. 31	465
Maine Central [d]	20,520.72	11,740.13	57.2	27.5	16.0	10.3	Dec. 31	443
Toledo, Peoria and Western	3,027.45	1,804.54	59.6	28.6	16.7	10.7	May 31	468
Cleveland, Cincinnati, Chicago and St. Louis.	85,027.09	52,530.35	61.8	29.7	17.3	11.1	Dec. 31	428
Charleston and Western Carolina [a]	2,959.74	1,866.56	63.1	30.3	17.7	11.4	Dec. 31	416
Chicago, Burlington and Quincy	156,802.11	108,821.06	69.4	33.3	19.4	12.5	Dec. 31	421
Long Island	19,284.62	14,053.03	72.9	35.0	20.4	13.1	June 30	441
Central Vermont [a]	$9,416.83	$6,934.70	73.6	35.3	20.6	13.2	Mar. 31	415
Baltimore and Ohio	212,743.24	157,018.61	73.8	35.4	20.7	13.3	June 30	409
Southern Pacific, Atlantic System [a]	52,556.16	38,973.60	74.2	35.6	20.8	13.4	Mar. 31	464
Buffalo, Rochester and Pittsburgh	24,001.72	18,006.96	75.0	36.0	21.0	13.5	June 30	412
Boston and Maine [d]	92,291.33	69,273.29	75.1	36.0	21.0	13.5	Aug. 31	411
Chesapeake and Ohio	75,385.81	57,999.68	76.9	36.9	21.5	13.8	Dec. 31	417

Relative price paid for lubricants by 65 railroads, 1906—Continued.

Railroad.	Invoice cost of all lubricants used.	Amount paid by the railroad.	Per cent of invoice cost paid.	Price paid per gallon.			End of the contract year in 1906.	Petitioner's Exhibit No.
				Valve oil.	Engine oil.	Car oil.		
				Cents.	*Cents.*	*Cents.*		
Kansas City Southern	$21,160.61	$16,287.90	77.0	37.0	21.6	13.9	Dec. 31	437
Oregon Railroad and Navigation Co	15,985.67	12,801.45	80.1	38.4	22.4	14.4	Mar. 31	456
Nashville, Chattanooga and St. Louis	37,828.94	31,226.25	82.5	39.6	23.1	14.9	Dec. 31	447
Chicago Great Western	34,631.24	29,019.40	83.8	40.2	23.5	15.1	June 30	422
Michigan Central	71,033.38	60,471.90	85.1	40.8	23.8	15.3	Dec. 31	444
Norfolk and Western	76,174.15	65,608.56	86.1	41.3	24.1	15.5	Dec. 31	454
Baltimore and Ohio Southwestern	26,137.94	22,686.46	86.8	41.7	24.3	15.6	June 30	410
Chicago and Alton	34,152.30	29,940.72	87.7	42.1	24.6	15.8	Mar. 31	418
New Orleans and Northeastern	5,621.22	4,963.44	88.3	42.4	24.7	15.9	June 30	448
Lake Shore and Michigan Southern	108,257.07	97,271.43	89.9	43.2	25.2	16.2	June 30	439
Georgia Southern and Florida	5,157.76	4,657.76	90.3	43.3	25.3	16.3	June 30	433
Louisville and Nashville	98,259.56	89,078.07	90.7	43.5	25.4	16.3	Feb. 28	442
Oregon Short Line	22,380.24	20,319.57	90.8	43.6	25.4	16.3	Mar. 31	457
New York Central and Hudson River System	261,556.22	241,614.75	92.4	44.4	25.9	16.6	Dec. 31	449
Great Northern Railway System	89,024.42	82,251.38	92.4	44.4	25.9	16.6	June 30	434
Central Railroad of New Jersey	44,310.27	41,152.17	92.9	44.6	26.0	16.7	Feb. 28	414
Cincinnati, New Orleans and Texas Pacific	17,304.38	16,186.58	93.5	44.9	26.2	16.8	June 30	427

Seaboard Air Line	37,222.00	34,971.56	94.0	45.1	26.3	16.9	June 30	463
Lake Erie and Western	13,940.35	13,311.36	95.5	45.8	26.7	17.2	Dec. 31	438
Cincinnati, Hamilton and Dayton	26,965.15	25,804.51	95.7	45.9	26.8	17.2	Dec. 31	426
Kanawha and Michigan	7,342.33	7,083.59	96.5	46.3	27.0	17.4	Dec. 31	467
Chicago, St. Paul, Minneapolis and Omaha	29,301.36	28,301.36	96.6	46.4	27.0	17.4	Dec. 31	425
Chicago and Northwestern	139,849.41	137,208.55	98.1	47.1	27.5	17.7	June 30	420
Chicago, Milwaukee and St. Paul	110,001.15	108,080.91	98.2	47.1	27.5	17.7	Jan. 31	423
Atchison, Topeka, and Santa Fe System	173,717.47	171,269.54	98.6	47.3	27.6	17.7	June 30	407
Detroit, Toledo and Ironton	6,396.40	6,330.99	99.0	47.5	27.7	17.8	Nov. 30	431
Philadelphia and Reading	107,042.90	106,184.62	99.2	47.6	27.8	17.9	June 30	461
Delaware, Lackawanna and Western	72,033.11	71,753.61	99.6	47.8	27.9	17.9	Oct. 31	430
Illinois Central	122,763.66	122,763.66	100	48	28	18	July 31	436
Chicago, Rock Island and Pacific	120,769.35	120,769.35	100	48	28	18	Dec. 31	424
Erie Railroad	112,285.64	112,285.64	100	48	28	18	Dec. 31	432
Northern Pacific	108,725.88	108,725.88	100	48	28	18	Apr. 30	455
Southern Railway	102,627.08	102,627.08	100	48	28	18	June 30	466
New York, New Haven and Hartford	96,788.31	96,788.31	100	48	28	18	(e)	451
Lehigh Valley	77,345.20	77,345.20	100	48	28	18	June 30	440
Atlantic Coast Line	54,613.45	54,613.45	100	48	28	18	Dec. 31	408
Union Pacific	52,132.14	52,132.14	100	48	28	18	Mar. 31	469
Delaware and Hudson Company System	50,417.29	50,417.29	100	48	28	18	Dec. 31	429
Pere Marquette	33,331.72	33,331.72	100	48	28	18	Dec. 31	462
Chicago and Eastern Illinois	31,560.91	31,560.91	100	48	28	18	Dec. 31	419

Relative prices paid for lubricants by 65 railroads, 1906—Continued.

Railroad.	Invoice cost of all lubricants used.	Amount paid by the railroad.	Per cent of invoice cost paid.	Price paid per gallon.			End of the contract year in 1906.	Petitioner's Exhibit No.
				Valve oil.	Engine oil.	Car oil.		
				Cents.	*Cents.*	*Cents.*		
New York, Chicago and St. Louis	$24,019.12	$24,019.12	100	48	28	18	Feb. 28	450
Minneapolis, St. Paul and Sault Ste. Marie	23,102.42	23,102.42	100	48	28	18	Dec. 31	445
Mobile and Ohio	20,888.73	20,888.73	100	48	28	18	Jan. 31	446
New York, Ontario and Western	18,995.26	18,995.26	100	48	28	18	Dec. 31	452
Hocking Valley	15,202.72	15,202.72	100	48	28	18	Mar. 31	435
Yazoo and Mississippi Valley	14,257.96	14,257.96	100	48	28	18	July 31	470
Toledo and Ohio Central	11,646.92	11,646.92	100	48	28	18	Dec. 31	467
New York, Susquehanna and Western	7,134.73	7,134.73	100	48	28	18	Dec. 31	453
Total	4,654,050.74	3,752,248.26	.....	.....	.....	.....	.....	.....

[a] For this road the invoice cost and the amount paid, as shown in the exhibit, have each been reduced by the additional amount charged in the invoice cost to cover the extra freight charge for delivery beyond the limits of the free-delivery territory. Making this deduction from both these items gives figures on exactly the same basis as those shown for the other roads (vol. 1, p. 433). This method was also used by the defendants in compiling Defendants' Exhibit 67, columns 1 and 7.

[b] Figures for the contract year ended April 30, 1907, are here used, as this road purchased its oils from an independent oil company during the preceding year.

[c] This entry is the guaranteed cost as shown in the exhibit less the adjustment, $5,440.26, which was, in fact, a reduction in the guaranteed cost for that year because of the sliding scale in the passenger-car guaranty.

[d] For this road the invoice cost and the amount paid, as shown in the exhibit, have each been reduced by an amount equivalent to 2 cents per gallon of oil used. Unlike the contracts with other roads, the settlements with the Boston and Maine and Maine Central include the value of the barrels as well as the oil under the guaranties, so that the railroad may either keep them or return them and receive a further refund (vol. 7, p. 262). Making this deduction from both items mentioned gives figures on exactly the same basis as those shown for the other roads. This method was also used by the defendants in compiling Defendants' Exhibit 67, columns 1 and 7.

[e] The contract year ended December 31, 1905, was the last furnished for this road, and the figures for that year are here used.

A mere glance at this table shows a remarkable discrimination in the actual prices paid by the different railroad companies. There are three separate contracts with the three operating companies of the Pennsylvania system, and the negotiations of and the settlements under these contracts have been separate. The Pennsylvania Company (Pittsburgh, Fort Wayne & Chicago) and the Pittsburgh, Cincinnati, Chicago and St. Louis operate the two divisions of the Pennsylvania lines west of Pittsburg, and the Pennsylvania Railroad Company operates the Pennsylvania lines east of Pittsburg. The payment made by the Pennsylvania Company was only 36.8 per cent of the invoice cost, that by the Pittsburgh, Cincinnati, Chicago & St. Louis 39.5 per cent, and that by the Pennsylvania lines east of Pittsburg 51.9 per cent. Taking the three Pennsylvania companies together the payment was only 47.5 per cent of the invoice cost of the lubricants used. The great importance of these three contracts is shown by the fact that the invoice cost of the lubricants purchased under them was 20.4 per cent of the total for all roads in the above table. A small road—the Central of Georgia—also had a very favorable contract under which only 48.4 per cent of the invoice cost was paid. The prices paid by the other railroad companies are distributed between the low prices paid by these companies and the full invoice prices which were paid by 20 of the 65 roads. A very striking fact is shown by totaling the figures for the 38 roads each of which paid 90 per cent of the invoice prices or more. These 38 roads used lubricants amounting to $2,360,412.97 at the invoice prices, for which they paid $2,304,169.37, or only $56,243.60 less than the full invoice cost. The total refund to these 38 railroads was only 2.4 per cent of the total invoice cost. It is thus shown that a majority of the roads paid prices averaging more than twice those paid by the Pennsylvania system and the Central of Georgia. The New York Central & Hudson River, a road comparable in every way with the Pennsylvania system, paid 92.4 per cent, while the Pennsylvania paid only 47.5 per cent.

The same discrimination is expressed in a different way through the actual prices paid per gallon. Thus for valve

oil the Pennsylvania Company (Pittsburgh, Fort Wayne & Chicago) paid 17.7 cents per gallon and the Illinois Central 48 cents.

The above table contains all railroads for which settlements were produced covering more than one year. There are exhibits covering a number of other railroads for only one year each. For these roads the same data as given above for the 65 roads are here presented, except that the prices paid per gallon have been omitted for brevity.

Relative prices paid for lubricants by 89 other railroads.

Railroad.	Invoice cost of all lubricants used.	Amount paid by the railroad.	Per cent of invoice cost paid.	End of contract year.	Petitioner's Exhibit No.
San Pedro, Los Angeles and Salt Lake [a]	$8,495.71	$4,520.30	53.2	Sept. 30, 1905	198
Georgia Railroad [a]	9,921.38	5,340.69	53.8	May 31, 1907	[b] 482
Erie and Wyoming Valley	4,189.05	2,911.88	69.5	Sept. 30, 1905	[c] 483
Chicago, Cincinnati and Louisville	3,081.60	2,313.80	75.1	Sept. 30, 1905	[c] 474
Southern Indiana	5,915.91	4,450.08	75.2	June 30, 1905	489
Wheeling and Lake Erie	20,155.89	15,155.89	75.2	June 30, 1905	209
Ann Arbor	3,722.16	2,831.08	76.1	Mar. 31, 1905	472
Santa Fe, Prescott and Phoenix [a]	2,003.27	1,536.37	76.7	Oct. 31, 1904	199
Florida East Coast	10,310.55	8,127.20	78.8	June 30, 1905	164
Cleveland, Akron and Columbus	5,231.95	4,290.98	82.0	Dec. 31, 1904	478
Bangor and Aroostook	6,699.33	5,521.69	82.4	Dec. 31, 1904	473
Grand Rapids and Indiana	13,740.40	11,423.29	83.1	June 30, 1905	165
Alabama and Vicksburg	2,525.37	2,110.62	83.6	June 30, 1905	471
Richmond, Fredericksburg and Potomac	8,366.44	7,242.57	86.6	June 30, 1905	488
Louisville, Henderson and St. Louis	2,795.34	2,449.16	87.6	June 30, 1905	486
Chicago, Indianapolis and Louisville	15,123.84	13,779.19	91.1	June 30, 1905	149
Rutland Railroad	8,040.83	7,380.16	91.8	Jan. 31, 1905	196
Bessemer and Lake Erie	15,674.98	14,524.60	92.7	Mar. 31, 1906	136

Relative prices paid for lubricants by 39 other railroads—Continued.

Railroad.	Invoice cost of all lubricants used.	Amount paid by the railroad.	Per cent of invoice cost paid.	End of contract year.	Petitioner's Exhibit No.
Western Maryland	4,720.35	4,373.07	92.7	Nov. 30, 1904	208
Denver and Rio Grande and Rio Grande Western	43,822.47	41,109.22	93.9	Mar. 31, 1905	160
Vicksburg, Shreveport and Pacific	1,927.06	1,808.68	93.9	June 30, 1905	490
Gulf and Ship Island	4,053.47	3,853.50	95.1	June 1, 1905	484
Wisconsin Central	17,774.63	17,774.63	100.0	Feb. 28, 1905	210
Toledo, St. Louis and Western	10,216.78	10,216.78	100.0	Aug. 31, 1904	206
Iowa Central	8,240.52	8,240.52	100.0	Dec. 31, 1904	485
Cleveland, Lorain and Wheeling	8,018.20	8,018.20	100.0	June 30, 1904	156
Chicago, Lake Shore and Eastern	6,861.28	6,861.28	100.0	June 30, 1905	476
Kansas City, Memphis and Birmingham	5,945.95	5,945.95	100.0	Oct. 31, 1904	170
Chicago, Peoria and St. Louis	5,759.00	5,759.00	100.0	July 31, 1904	477
Duluth and Iron Range	5,744.20	5,744.20	100.0	Mar. 31, 1905	479
Minneapolis and St. Louis	5,658.24	5,658.24	100.0	June 30, 1905	487
Chicago Junction	5,348.42	5,348.42	100.0	Sept. 30, 1907	475
Colorado Midland	5,233.03	5,233.03	100.0	Oct. 31, 1904	157
Duluth, Missabe and Northern	4,792.98	4,792.98	100.0	Mar. 31, 1905	480
Elgin, Joliet and Eastern	4,684.94	4,684.94	100.0	June 30, 1904	481
Evansville and Terre Haute	3,944.36	3,944.36	100.0	June 30, 1904	163

West Virginia Central and Pittsburg	3,936.04	3,936.04	100.0	Dec. 31, 1905	491
Buffalo and Susquehanna	3,150.65	3,150.65	100.0	Dec. 31, 1904	139
St. Joseph and Grand Island	2,543.43	2,543.43	100.0	July 31, 1904	197
Total	308,370.00	274,906.67			

a Corrections covering the extra freight charges have been made as explained in footnote a on page 404. b Fifteen months. c Eleven months.

Of these 39 railroads, 17 paid the full invoice prices. Two of the roads paid less than 60 per cent, and one of these—the Georgia Railroad—no doubt was given low prices because previously it had been lubricated at a low cost by the New York Lubricating Oil Company, an independent concern. Except the Erie & Wyoming Valley, which paid 69.5 per cent, the other roads paying less than the invoice prices range between 75 and 95 per cent thereof.

In order to show that this discrimination in the prices at which lubricating oils have been sold to the various railroads has been a permanent one—that is, that certain railroads have paid low prices for a long period of time and others have paid high prices during the same years—the table opposite is presented. The first column shows the names of the same 65 railroad companies shown in the table on pp. 401–4; the second column, the number of years covered by the settlements in evidence; and the third column, the per cent which the total payment made during this period was of the total invoice cost of all lubricants used. For example, Petitioner's Exhibit 459 presents the settlements between the Galena-Signal Oil Company and the Pennsylvania Company for the ten contract years ended February 28, 1906. The invoice cost for all lubricants used during these ten years was $970,078.94, and the total payment made therefor was $373,625.08, or 38.5 per cent. Similarly, Petitioner's Exhibits 460 and 458, 191, and 822 show that during the ten years ended February 28, 1906, taken together, the Pittsburgh, Cincinnati, Chicago & St. Louis paid only 44.9 per cent of the invoice cost of the lubricants used, and that the Pennsylvania lines east of Pittsburg, during the ten years and eight months ended December 31, 1906, paid only 56.1 per cent. The 65 railroad companies are ranked according to this price paid during the full period covered by the exhibits. The rank therefore differs from that in the table beginning on page 401, where the roads are shown in the order of the price paid for the contract year ended in 1906. Columns 4 to 15, in the table below, show the per cent of the invoice cost which was paid during each contract year ended in the years from 1896 to 1907. For nearly all of the roads the period covered is nine or ten years. For a number of roads several years within the

Relative prices paid for lubricants by 65 railroads, 1896–1907.

[Compiled from Petitioner's Exhibits 131 to 211, 407 to 470, and 822.]

Railroad.	Length of period covered.		Per cent of the invoice cost paid during the full period.	Per cent of invoice cost paid for the contract year ended in—											
	Years.	Months.		1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.
Pennsylvania Company	10	.....	38.5	.....	40.2	45.1	41.7	41.6	36.5	37.1	31.6	41.3	39.1	36.8	.....
Pittsburgh, Cincinnati, Chicago and St. Louis	10	.....	44.9	.....	51.8	55.2	51.0	52.2	45.2	45.8	37.1	42.0	43.3	39.5	.....
Southern Pacific (Pacific System [a])	9	10	49.6	.....	55.8	58.9	58.4	54.7	47.5	44.2	41.8	39.1	49.5	57.0	.....
Central of Georgia [a]	4	1	54.2	.....	.....	.....	.....	.....	.....	53.5	59.1	57.5	.....	48.4	.....
Charleston and Western Carolina [a]	4	9	54.9	.....	.....	.....	.....	.....	.....	.....	47.5	59.9	51.2	63.1	.....
Pennsylvania lines east of Pittsburg	10	8	56.0	.....	50.0	62.8	62.7	60.2	58.3	58.7	52.2	55.4	54.3	51.9	.....
Toledo, Peoria and Western	8	3	57.2	.....	52.9	55.7	58.0	62.9	66.3	.....	.....	.....	47.8	59.6	54.9
Southern Pacific (Atlantic System [a])	9	10	57.3	.....	48.7	60.3	62.6	64.1	60.9	50.5	43.0	45.7	60.8	74.2	.....
Buffalo, Rochester and Pittsburgh	9	.....	58.6	.....	.....	.....	46.4	45.8	50.0	45.3	63.4	64.5	62.1	75.0	66.8
Maine Central [c]	9	.....	62.0	.....	.....	76.4	62.4	65.5	64.2	77.1	60.4	55.9	53.0	57.2	.....
Cleveland, Cincinnati, Chicago and St. Louis	9	.....	63.3	.....	.....	56.5	62.7	68.8	69.7	63.6	66.5	62.3	60.6	61.8	.....
Chesapeake and Ohio	10	.....	75.0	.....	59.3	74.4	82.6	77.3	72.0	66.0	83.9	80.8	77.5	76.9	.....
Boston and Maine [c]	9	.....	75.8	.....	.....	67.2	71.9	78.5	73.8	83.6	82.6	74.1	72.5	75.1	.....
Central Vermont [a]	9	6	76.6	.....	77.2	75.4	73.8	71.0	90.3	81.3	(b)	73.0	72.7	73.6	.....
Nashville, Chattanooga and St. Louis	8	.....	79.0	.....	.....	.....	59.2	77.5	87.7	87.4	81.8	80.7	78.3	82.5	.....
Philadelphia and Reading	10	4	79.1	.....	50.2	71.7	76.6	79.0	72.3	74.9	76.3	83.4	91.8	99.2	.....
Michigan Central	5	.....	79.2	.....	.....	.....	.....	.....	.....	64.4	80.7	81.7	83.7	85.1	.....
Long Island	10	.....	80.2	.....	.....	88.1	87.5	85.3	84.5	78.3	80.2	81.9	80.6	72.9	71.3
Central Railroad of New Jersey	10	.....	80.5	.....	.....	63.8	84.0	77.7	83.8	77.7	73.0	80.7	77.8	92.9	92.0
Norfolk and Western	9	4	83.7	.....	.....	84.2	87.2	86.2	84.9	90.3	78.5	74.5	84.5	86.1	.....
Chicago, Burlington and Quincy	10	.....	84.7	.....	87.3	85.7	82.1	100.0	95.7	91.1	90.4	80.7	76.7	69.4	.....
Georgia Southern and Florida	10	.....	85.7	.....	.....	84.4	89.5	86.3	76.3	74.7	80.5	90.5	91.3	90.3	89.1
New Orleans and Northeastern	10	.....	87.1	.....	87.5	86.7	88.9	77.3	85.2	76.0	97.3	89.9	91.9	88.3	.....
Kansas City Southern	10	7	86.6	.....	76.3	76.6	100.0	84.0	93.2	97.8	78.9	88.1	88.6	77.0	.....
Atchison, Topeka and Santa Fe System	9	11	86.8	.....	94.5	91.0	89.1	88.5	90.7	78.8	82.5	80.6	81.6	98.6	.....
Lake Shore and Michigan Southern	7	6	86.9	.....	.....	.....	77.7	77.5	99.9	91.9	84.7	84.6	84.9	89.9	.....
Great Northern Railway System	10	.....	87.8	.....	94.8	94.8	80.5	75.7	76.6	74.6	90.0	97.5	100.0	92.4	.....
Chicago and Alton	7	.....	88.3	.....	.....	.....	.....	.....	88.5	77.8	93.8	93.6	87.7	87.7	89.7
Baltimore and Ohio	9	7	88.4	.....	97.1	100.0	99.0	96.8	90.4	93.3	88.9	89.0	76.3	73.8	.....
Seaboard Air Line	7	3	89.1	.....	.....	.....	.....	94.5	95.4	84.2	83.2	86.9	88.3	94.0	.....
Chicago Great Western	10	.....	89.2	.....	98.3	100.0	100.0	100.0	100.0	(b)	100.0	71.5	73.4	83.8	.....
Chicago, St. Paul, Minneapolis and Omaha	10	.....	90.3	.....	97.4	91.1	75.9	82.1	86.1	87.3	94.2	100.0	96.5	96.6	.....

[a] Corrections covering the extra freight charge have been made as explained in footnote [a] on page 404.

[b] Exhibits cover entire period, but no entry for this year due to shifting of the contract year.

[c] Correction covering the barrel allowance has been made as explained in footnote [d] on page 404.

Relative prices paid for lubricants by 65 railroads, 1896–1907—Continued.

[Compiled from Petitioner's Exhibits 131 to 211, 407 to 470, and 822.]

Railroad.	Length of period covered.		Per cent of the invoice cost paid during the full period.	Per cent of invoice cost paid for the contract year ended in—											
	Years.	Months.		1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.
Detroit, Toledo and Ironton	5	5	90.7	.....	.....	.....	.....	.....	.....	82.3	96.1	91.9	86.0	99.0	.....
Lehigh Valley	10	.....	91.2	.....	.....	94.7	95.2	91.5	80.5	77.5	86.5	87.5	97.2	100.0	99.2
Cincinnati, Hamilton and Dayton	10	3	92.0	.....	73.9	87.9	97.7	95.8	100.0	97.8	95.6	94.4	86.5	95.7	.....
Baltimore and Ohio Southwestern	8	.....	92.5	.....	.....	.....	.....	100.0	100.0	100.0	100.0	100.0	80.0	86.8	81.1
Kanawha and Michigan	6	.....	93.3	.....	.....	.....	.....	.....	86.6	76.9	95.2	100.0	100.0	96.5	.....
Chicago, Milwaukee and St. Paul	10	.....	93.4	.....	.....	90.5	88.1	87.4	88.9	93.7	93.3	96.1	95.6	98.2	100.0
Chicago and Northwestern	9	6	93.8	.....	100.0	93.6	86.7	86.2	93.0	96.6	(a)	93.5	97.7	98.1	.....
Oregon Railroad and Navigation Company	10	3	93.9	100.0	98.9	100.0	97.8	97.2	89.9	100.0	100.0	(a)	79.0	80.1	.....
Northern Pacific	10	.....	94.6	.....	.....	100.0	100.0	90.9	88.0	85.5	80.7	100.0	100.0	100.0	100.0
New York, Ontario and Western	10	.....	94.6	.....	98.9	100.0	99.7	98.4	85.4	86.6	80.7	100.0	100.0	100.0	.....
Louisville and Nashville	8	2	95.0	.....	82.0	100.0	100.0	100.0	100.0	92.5	.....	.....	.....	90.7	98.5
Oregon Short Line	10	.....	95.1	.....	.....	96.2	99.3	100.0	100.0	100.0	100.0	97.5	78.4	90.8	88.1
Southern Railway	9	4	95.9	.....	88.1	95.0	98.4	93.1	100.0	90.8	90.8	100.0	100.0	100.0	.....
Lake Erie and Western	8	10	96.4	.....	100.0	100.0	100.0	100.0	(b)	94.0	87.6	93.9	100.0	95.5	.....
Toledo and Ohio Central	6	.....	96.7	.....	.....	.....	.....	.....	100.0	86.5	99.1	96.0	100.0	100.0	.....
Cincinnati, New Orleans and Texas Pacific	10	.....	97.2	.....	99.9	100.0	100.0	100.0	100.0	100.0	89.1	100.0	95.9	93.5	.....
New York, Susquehanna and Western	6	.....	97.2	.....	.....	.....	.....	.....	95.8	100.0	93.0	96.1	98.8	100.0	.....
Chicago, Rock Island and Pacific	10	.....	97.4	.....	100.0	100.0	100.0	100.0	100.0	100.0	84.5	c100.0	97.6	100.0	.....
New York Central and Hudson River Railroad	10	4	97.4	100.0	100.0	100.0	98.4	100.0	100.0	98.8	97.2	93.3	c100.0	92.4	.....
Hocking Valley	10	3	98.1	.....	99.4	100.0	(a)	100.0	99.5	100.0	100.0	95.8	94.3	100.0	95.5
Atlantic Coast Line	10	2	98.3	.....	100.0	100.0	85.8	91.6	97.4	97.4	100.0	99.9	100.0	100.0	.....
Erie Railroad	10	.....	98.8	.....	100.0	100.0	100.0	100.0	100.0	100.0	95.5	96.8	97.3	100.0	.....
Chicago and Eastern Illinois	10	.....	98.9	.....	100.0	100.0	100.0	90.1	98.4	99.9	99.1	100.0	100.0	100.0	.....
New York, New Haven and Hartford	10	6	98.9	100.0	100.0	100.0	100.0	100.0	100.0	97.8	95.7	96.6	100.0	.....	.....
Mobile and Ohio	9	.....	99.2	.....	.....	.....	92.8	99.3	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Union Pacific	10	3	99.3	100.0	100.0	100.0	(b)	100.0	95.6	100.0	100.0	100.0	97.0	100.0	.....
Minneapolis, St. Paul and Sault Ste. Marie	10	2	99.4	.....	100.0	93.7	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	.....
Delaware, Lackawanna and Western	7	.....	99.9	.....	.....	.....	.....	100.0	100.0	100.0	100.0	100.0	100.0	99.6	.....
Delaware and Hudson Company System	10	.....	100.0	.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	.....
Illinois Central	9	11	100.0	.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	.....
New York, Chicago and St. Louis	9	.....	100.0	.....	.....	.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Pere Marquette	9	9	100.0	.....	100.0	100.0	100.0	(a)	100.0	100.0	100.0	100.0	100.0	100.0	.....
Yazoo and Mississippi Valley	10	.....	100.0	.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	.....

[a] Exhibits cover entire period, but no entry for this year because of shifting of the contract year.
[b] Settlement for this year not in evidence.
[c] The Chicago, Rock Island and Pacific, during 1904, and the New York Central and Hudson River, during 1905, purchased the Galena oils at the full invoice prices without any guaranty, but settlement sheets were not produced. (Vol. 1, p. 444, Petitioner's Exhibit 424.)

period, are not covered by the exhibits. In the cases of the Central of Georgia, the Charleston & Western Carolina, the Toledo, Peoria & Western, and the Louisville & Nashville, this is due to the fact that independent oil companies had the trade with these roads during the years missing.

This table proves a most extraordinary and continuous discrimination in the prices at which the Galena-Signal Oil Company has sold its products to the various railroad companies. During the past ten years the highest price paid in any one year by the Pennsylvania Company (Pittsburgh, Fort Wayne & Chicago) was 45.1 per cent of the invoice prices; the lowest was 31.6 per cent, and combining the settlements for the entire ten years it paid only 38.5 per cent. Similarly, the payments made by the Pittsburgh, Cincinnati, Chicago & St. Louis (also part of Pennsylvania System) ranged from 37.1 to 55.2 per cent, with an average of 44.9 per cent for the full period. And the Pennsylvania lines east of Pittsburg paid from 50 per cent to 62.8 per cent, with 56.1 per cent for the period of ten years and eight months taken together. Two small roads—the Central of Georgia and the Charleston & Western Carolina—have each paid on the average about 54 per cent during the few years the Galena has had their trade. During the past ten years the payments made by the Southern Pacific (Pacific System) have ranged from 39.1 per cent to 58.9 per cent, averaging 49.6 per cent for the full period, and the Southern Pacific (Atlantic System) ranged from 43 per cent to 64.1 per cent as the highest, except 74.2 per cent in 1906, and for the full period the payment was 57.3 per cent of the invoice prices. During the past nine years, taken together, the Buffalo, Rochester & Pittsburgh has paid only 58.6 per cent, and during the same number of years the Cleveland, Cincinnati, Chicago & St. Louis and the Maine Central have each paid about 63 per cent.

During the same years in which the above-mentioned roads were purchasing their lubricants at the relatively low prices shown, the New York Central & Hudson River paid on the average 97.4 per cent of the invoice prices. Twenty-three of the 65 railroads paid more than 95 per cent of the invoice cost of the lubricants used during the full period

shown for each, and 5 of those 23 roads paid the full invoice prices in every one of the last ten contract years.

During the past ten years the three operating companies of the Pennsylvania System used lubricating oils amounting to $6,370,188.52 at the invoice prices, for which they paid only $3,304,248.22, or $3,065,940.30 less than the invoice cost. During the last ten years the New York Central & Hudson River used lubricating oils amounting to $2,097,-108.28, for which it paid $2,042,902.48, or only $54,205.80 less than the full invoice cost. The Pennsylvania System as a whole paid 51.9 per cent of the invoice cost during these years, and had the New York Central & Hudson River purchased at this same rate it would have paid the Galena-Signal Oil Company $955,000 less than it actually did pay.

The prices paid by the Pennsylvania and some other railroads are practically the prices at which lubricants equally efficient could be purchased from other manufacturers. Aside from other evidence to this effect, the fact that such prices are secured by these roads is itself an evidence that they could get similar prices from competitors. These are the prices at which the Galena-Signal Oil Company would have to sell its lubricants generally were it not for its monopoly of this trade through the influence of the Standard over the railroad companies. By reason of this influence, the Standard has a complete monopoly of the business, and from most railroads it secures prices double those obtainable under competitive conditions. The Galena itself sells its lubricants at one-half its usual prices to those roads which it no doubt knows would buy from others on this basis if not given these favorable contracts. It is very important to notice that for each railroad shown in this last table the prices indicated were paid under contracts which expired from time to time, thus affording either party opportunity to adjust the contract provisions on a market basis. (Defendant's Exhibit 62.)

Thus the first contract with the Pennsylvania lines east of Pittsburg began April 1, 1896 (Petitioner's Exhibit 492); the second began March 1, 1899; the third, January 1, 1902; and this contract was still in force at the time of Mr. Steinbrenner's testimony. (Vol. 3, p. 1477.) And these contracts might have been canceled at any time

by the Galena on giving six months' notice. (Petitioner's Exhibit 127.) The first contracts with the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis were for one year from December 1, 1895, for passenger-car and freight-car services, and one year from March 1, 1896, for locomotive service. Succeeding contracts for these two companies began March 1, 1897, March 1, 1898, March 1, 1903, and March 1, 1907. (Petitioner's Exhibits 125, 126, and 493 to 504.) The contracts effective March 1, 1903, were not made until June 9, 1905. (Vol. 3, p. 1477.) The Galena-Signal Oil Company has therefore had every opportunity to decline this business if it did not wish it at the prices paid. It is important to notice that on these three roads the mileage guaranties, as modified from time to time to meet the change in the amount of lubricating oil used under changing conditions as to the weight of rolling stock, etc., have preserved about the same rate of payment on a gallonage basis. The Pennsylvania companies have evidently been awake to their interest and kept themselves informed on the market prices of such lubricants. Prior to the first contracts with the Galena-Signal Oil Company, in 1895 and 1896, they made very careful tests of lubricating oils, and by purchasing in the open market they had reduced the cost per thousand miles run far below the guaranties then made by the Galena to most railroads. (Vol. 1, p. 447, and Defendant's Exhibit 62.) In order to get the business, the Galena had to make the guaranties 10 per cent less than the mileage costs as thus established by the Pennsylvania, except on the locomotive service for the two companies operating west of Pittsburg, where the guaranties were the same as the previous cost (Petitioner's Exhibits 492–494, 499, and 500); and since that time the increases in the mileage guaranties have served merely to cover the increase in the quantity of oil used per thousand miles, so that the price paid per gallon is now about the same as at the beginning.

Mr. Steinbrenner testified that the contracts with the Pennsylvania Company (Pittsburgh, Fort Wayne & Chicago) and the Pittsburgh, Cincinnati, Chicago & St. Louis (Petitioner's Exhibits 498 and 504) effective March 1, 1907, increased the locomotive guaranties from $1.30 to $1.90. (Vol. 11, p. 5.) Examination of the contracts shows that this is

not a correct statement of the change in the guaranties. The locomotive guaranty is not to be $1.90 unless the cost of the lubricants used per thousand miles, at the invoice prices, is $4.38. For each cent by which the invoice cost per thousand miles run in any contract year may be less than $4.38 the guaranty shall be one-half cent less than $1.90, until it shall be reduced to $1.30. Thus, if the invoice cost per thousand miles were $3.18, the guaranty would be reduced to $1.30, as in the old contracts. Whether the guaranty and the invoice cost are $1.90 and $4.38, or $1.30 and $3.18, respectively, or any sums between these two extremes, the guaranty will always be less than 44 per cent of the invoice cost, ranging from 43.4 to 40.9 per cent. There can be no question that the Galena-Signal Oil Company intended to sell its lubricants at less than half the invoice prices under this guaranty.

The new guaranties on the passenger-car and freight-car services are made in a similar manner.

Mr. Steinbrenner was requested to produce the settlement sheets under these new contracts, but he did not comply with this request. (Vol. 11, pp. 24 and 484.) However, the effect of the changes in guaranties may be shown by applying them to the data given in the settlement sheets with the two railroad companies for the year ended February 28, 1906. (Petitioner's Exhibits 459 and 460.) This computation will show how much greater the payment for that year by the railroad companies would have been under the provisions of the new contract than it actually was under the old contracts.

Computation of the amounts which would have been paid for lubricants by the Pennsylvania lines west of Pittsburg, during the year ended February 28, 1906, if the contract which took effect March 1, 1907, had been in force during that year.

	Pennsylvania Company.	Pittsburgh, Cincinnati, Chicago & St. Louis.
Locomotive service:		
Invoice cost of all lubricants used	$121,390.46	$101,223.13
Number of miles run by all locomotives	30,938,390	24,490,029
Invoice cost per 1,000 miles run	$3.924	$4.133
Guaranty, as provided in section 5, petitioner's Exhibits 498 and 504	$1.672	$1.776
Guaranteed cost	$51,728.99	$43,494.29
Passenger-car service:		
Invoice cost of all lubricants used	$6,354.78	$7,599.40
Number of miles run by all passenger cars	38,641,550	39,096,242
Invoice cost per 1,000 miles run	$0.1645	$0.1944
Guaranty, as provided in section 5, petitioner's Exhibits 498 and 504	$0.0918	$0.0993
Guaranteed cost	$3,547.29	$3,882.26
Freight-car service:		
Invoice cost of all lubricants used	$41,486.18	$23,922.09
Number of miles run by all freight cars	332,561,483	292,315,409
Invoice cost per 1,000 miles run	$0.1247	$0.0818
Guaranty, as provided in section 5, petitioner's Exhibits 498 and 504	$0.0587	$0.0479
Guaranteed cost	$19,521.36	$14,001.91
The three services:		
Invoice cost of all lubricants used	$169,231.42	$132,744.62
Total guaranteed cost under the terms of the new contract	$74,797.64	$61,378.46
Per cent of invoice cost that would have been paid under the terms of the new contract	44.2	46.2
Per cent of invoice cost paid under the previous contract (ante, p. 401)	36.8	39.5

The above statement shows that during the contract year ended February 28, 1906, the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis would have paid 44.2 per cent and 46.2 per cent of the invoice cost, respectively, under the terms of the new contract, instead of 36.8 per cent and 39.5 per cent, respectively, which they paid under the contract then in force. Therefore, the new contracts are evidently intended to result in payments of less than one-half of the invoice cost of the lubricants used by these companies; and if the payments for that year, as thus computed under the terms of the new contracts, be added to the payment made by the Pennsyl-

vania lines east of Pittsburg, a total payment by the Pennsylvania System of $473,161 is shown, which is only 49.7 per cent of $951,525.68, the invoice cost of all lubricants used by the system. (Ante, p. 401.) Apparently the adjustment under the new contracts was intended merely to cover the recent increase in the quantity of oil used per thousand miles, which was evidenced by the unusually low per cent of the invoice cost paid during 1906 by the two companies operating west of Pittsburg.

Other railroads, such as the Central of Georgia, Geo Railroad, and Toledo, Peoria & Western, which have in recent years placed their business with competing companies, are now purchasing from the Galena under contracts which result in payments only a little higher than those made by the Pennsylvania. It seems perfectly apparent that, where the officers of the railroad company are not subject to the influence of the Standard Oil Company, they ascertain the market price of such oils and refuse to contract except on this basis.

The Baltimore & Ohio paid 89.0 per cent of the invoice prices during the contract year ended June 30, 1904. The next contract reduced the locomotive guaranty from $2 to $1.75, the passenger car guaranty from $0.25 to $0.10, and the freight car guaranty from $0.08 to $0.07, and under these new guaranties the railroad paid only 73.8 per cent of the invoice prices during the year ended June 30, 1906. The statement of the purchasing agent of this railroad company, introduced in evidence, is as follows:

> The president of the Galena-Signal Oil Company called upon me and endeavored to secure an advance, claiming that, by reason of the larger equipment, the cost of lubrication per 1,000 miles had necessarily increased. I was unwilling to allow the advance, and after long-continued negotiations he consented to make a reduction rather than risk our placing orders elsewhere. (Vol. 11, p. 457.)

Mr. Steinbrenner stated that his company lost money on the contracts with the Pennsylvania companies and the other railroads paying low prices, but he denied any knowledge of the actual cost of manufacturing the lubricants, and

he refused to produce any information regarding it. (Vol. 11, p. 414.) The petroleum stocks and other materials from which the Galena-Signal Oil Company compounds its lubricants are undoubtedly bought mainly, if not entirely, from other Standard companies, and the cost of manufacture, as shown by its records, even if in evidence, could not be accepted as the market cost of such lubricants unless it were shown that the petroleum stocks and other materials obtained from Standard concerns were purchased at competitive prices, and not at prices unreasonably high. It is very important to note that Mr. Steinbrenner denied any knowledge whatever of the companies from which these stocks and other materials are purchased or of the prices paid for them, and he refused to produce any evidence on this matter. (Vol. 3, pp. 1473–1476.) He did state that the Eclipse Works of the Atlantic Refining Company (a Standard concern) is only half a mile from the works of the Galena-Signal Oil Company, and that while he did not know that there was a pipe line between the two plants, yet in fourteen years' service with the Galena he had never seen any delivery of oil to it. (Vol. 11, p. 534.)

The only explanation given by Mr. Steinbrenner for the relatively low prices paid by the Pennsylvania was that the trade with this road was valuable as an advertisement in Europe. (Vol. 1, p. 446; vol. 11, pp. 17 and 18.) The refund to the three Pennsylvania companies during the past ten years was $3,065,940, making it rather expensive advertising; particularly when the trade of the New York Central & Hudson River, which should be an equally good advertisement, was held under contracts resulting in very small refunds during the last ten years. Mr. Steinbrenner was asked why it was that the Central of Georgia and the Southern Pacific were taken at such an extremely low figure; if that also was for advertising purposes; and he answered that it was. (Vol. 11, pp. 17 and 18.) It is very strange if the little Central of Georgia is such a famous road that a contract with it would be of value as an advertisement. The real fact is that when the Galena can not get more it is willing to take a contract at prices less than one-half those usually received, either because there is a profit at these low prices

or because it wishes to keep its competitors from getting any foothold in the business with the railroad companies. The Central of Georgia was lubricated by the New York Lubricating Oil Company at a very low cost, and in order to take it away from this company the Galena offered to make a contract very favorable to the railroad.

ALLEGED ADVANTAGE OF GALENA OILS AND METHODS.

A great deal of testimony was offered by the defendants regarding the results obtained through the Galena experts, who visit the various purchasers and make suggestions regarding the methods of applying the oil and investigate cases of improper lubrication. A thorough consideration of the evidence shows that this inspection service is of the simplest character and that the cost of it is relatively very low. One man does all this work on the Chicago & Northwestern; Chicago, Milwaukee & St. Paul; New York, Chicago & St. Louis; Chicago, Lake Shore & Eastern; Elgin, Joliet & Eastern; and Chicago & Western Indiana. (Vol. 11, pp. 202 and 55.) The total payment for lubricants by these roads amounts to $285,000 per year. (*Ante*, pp. 403, 404, 408.) The total cost to the Galena-Signal Oil Company for this inspection of the use of its products sold for all purposes was only $182,297.39 in 1905 (vol. 3, p. 1474), while the sales of the company's products amounted to nearly $10,000,000 during the year ended December 31, 1906 (Petitioner's Exhibit 274 B), showing that the cost of this inspection is very low as compared with the volume of business. The results secured by this inspection are due merely to care in the use of the lubricants, and the methods followed are of the simplest character and known to all persons familiar with the use of lubricating oils. (See Defendant's Exhibit 25 and vol. 11, pp. 203 to 208.) The New York Lubricating Oil Company performed exactly the same service under its contracts with the Louisville & Nashville, the Central of Georgia, and the Georgia Railroad companies. (Vol. 2, pp. 518, 532, 570, and 777.)

The defendants offered a large amount of testimony to show that twenty or thirty years ago some railroads purchased inferior grades of lubricating oils and grease and that since the introduction of the Galena oils there has

been much improvement in the lubrication of railroad rolling stock; but it appeared on cross-examination of their witnesses that there has been great improvement and saving in all branches of railroad service, and there is no testimony that the improvement in lubrication is any more than that along other lines. See, for example, testimony of Mr. McKenna, second vice-president of the Chicago, Milwaukee & St. Paul (vol. 11, pp. 42 et seq. and 54); Mr. Hibbits, superintendent of motive power, Lehigh Valley (vol. 11, p. 133 et seq.); Mr. Miller, chairman board of directors Chicago, Milwaukee & St. Paul (vol. 11, p. 329 et seq.); Mr. Deems, general superintendent of motive power New York Central & Hudson River (vol. 12, p. 612 et seq.). Naturally, lubricating oils, the methods of using them, and the construction of the lubricated surfaces have been improved from year to year; and because of improved methods and better mechanical construction the quantity of oil used has been decreased. But there is no reason why the railroads should now pay the Galena-Signal Oil Company what it would cost to lubricate under the conditions prevailing a generation ago, and thus lose the financial advantage of the progress incident to all business. The invoice prices charged by the Galena are the same now as thirty years ago. (Steinbrenner, vol. 11, p. 412.) The high costs on some roads years ago were due to the use of such lubricants as tallow and lard oil, which were more expensive and less efficient than the petroleum oils subsequently introduced. (Vol. 11, pp. 27, 186, and 329.)

Testimony was also introduced to show that in many cases the first contract between the railroad company and the Galena contained guaranties equal to or 10 per cent less than the cost per thousand miles run during the preceding year when other oils were used; but it should be noted that in many cases the present guaranties are far above the first guaranties. (Defendant's Exhibit 62.) In recent years the quantity of oil used per thousand locomotive miles has generally increased, because of the increased weight of equipment; and if the guaranties had previously been on a proper basis they would naturally be increased to cover this change; but the proper calculation of such an increase in guaranties would be one to yield certain net prices per gallon, which ought to conform to the open market prices. It matters

not what relation the present cost per gallon or per thousand miles run bears to that before the Galena secured the business. The only way by which either the railroad company or the oil company can judge the contract is by comparison of the actual price per gallon paid under it with the current market values of similar oils.

Furthermore, most of the prior mileage costs on which Galena guaranties were based were no doubt the costs of lubricants furnished at very high prices by Standard Oil concerns. For instance, about 1894 the Vacuum Oil Company, a Standard Oil concern, turned over all its railroad business to the Galena-Signal Oil Company. (Vol. 2, pp. 503, 504.) The Standard, as we have seen, has, since 1879, or earlier, controlled from 75 to 95 per cent of the oil-refining business, and has much of the time been able to secure monopoly prices. The evidence shows that in some cases the prior costs were established by using Galena oils at the full invoice prices. (Vol. 11, pp. 424, 430, 493, and 494.)

BUSINESS DENIED TO INDEPENDENTS REGARDLESS OF PRICE OR QUALITY OF OIL.

So far as the testimony regarding the service rendered by the Galena-Signal Oil Company under its contract is concerned, the Government has never made any claim that it did not furnish good oil and good service, and all the defendants' testimony in this respect is entirely immaterial. But there is testimony showing that the service is no better than the independent companies were prepared to furnish, and no better than the New York Lubricating Oil Company actually did furnish to the Louisville & Nashville, Central of Georgia, and Georgia Railroad. To be sure, not much of this testimony could be procured, because no other independent company has been able for years to procure any contracts with the railroads. The railroads would not deal with them, and the fact undoubtedly is that the influence of the Standard Oil Company with the railroads has been the potent factor in enabling it to obtain a monopoly of this trade at extortionate prices.

The testimony of Mr. Philip Harrison, of the New York Lubricating Oil Company, regarding the contract his company had with the Louisville & Nashville Railroad, is very

significant. (Vol. 2, pp. 504–514.) It will be remembered that it was Mr. Harrison who testified that the New York Lubricating Oil Company had been selling lubricating oil in South Africa, and that the Standard Oil Company made contracts with the various steamship lines for transportation of lubricating oil to South Africa at about 21 shillings per ton, while about the same time the rates to the New York Lubricating Oil Company were raised from 21 to 42 shillings per ton, absorbing all the profit in the oil. (Harrison, vol. 2, pp. 491 et seq.)

Mr. Harrison testified in this case that from March 1, 1903, to February 28, 1905, the New York Lubricating Oil Company had a contract with the Louisville & Nashville Railroad similar in form to that used by the Galena-Signal Oil Company, and under which there was the same expert inspection of the use of the oils as is given by the Galena (vol. 2, p. 513), whereby it lubricated that road at prices much lower than the road had previously paid to the Galena, as shown below.

	New York Lubricating Oil Co. (Defendants' Exhibit 3).	Galena-Signal Oil Co. (Petitioners' Exhibit 504).
Invoice price per gallon in barrels:		
Valve oil	$0.36	$0.50
Engine oil	.20	.30
Coach oil	.18	.35
Car oil	.15	.20
Mileage guaranties:		
Locomotive service	1.53	1.69533
Passenger-car service	.12	.16
Freight-car service	.072	.09

As shown in Defendants' Exhibits 3–A and 3–B, the total payment by the Louisville & Nashville under this contract was $136,542 (the sum of the guaranteed costs in the locomotive and freight-car services and the invoice cost in the passenger-car service, as the three guaranties were not to be combined under this contract). Under the guaranties of the previous and succeeding contracts with the Galena, for the years ended February 28, 1903, and February 28, 1906 (the guaranteed cost was paid; see Petitioners' Exhibit 442), the railroad would have paid $161,916. The saving to the

railroad was over $25,000 under the contract with the New York Lubricating Oil Company as compared with the Galena contracts. And it appears from the testimony of Mr. Harrison (vol. 2, pp. 509 and 513) and from letters written by Mr. Milton H. Smith, president of the Louisville & Nashville, that the lubricants furnished by the New York Lubricating Oil Company and the service rendered by it were entirely satisfactory. Under date of February 7, 1905, Mr. Smith wrote to Mr. Harrison stating that he had heard no complaints regarding the quality of the lubricants furnished, and that Mr. Theodore H. Curtis, superintendent of machinery, had reported to him as follows:

> I have given the subject of lubrication my personal attention, and can say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory, and I believe them to be as good as any furnished heretofore. (Vol. 2, p. 511.)

When this contract was about to expire Mr. Harrison asked Mr. Smith to renew it and received the following reply:

> I won't decide that now; some changes have been made in the administration of affairs of our system, and I wish to consult with some one else before I give you a definite answer. (Vol. 2, p. 506.)

Later Mr. Harrison offered to lower the guaranty on the locomotive service to $1.45 (vol. 2, p. 507), but without any explanation whatever the railroad company gave the contract to the Galena-Signal Oil Company at the same invoice prices and guaranties which it had from the Galena before the contract with the New York Lubricating Oil Company. (Vol. 2, pp. 507–510, and Petitioners' Exhibit 506.) This new contract with the Galena was signed January 18, 1905, or three weeks before the letter, quoted above, testifying to the good quality of the lubricants furnished by the New York Lubricating Oil Company.

It is significant to note here that in 1903, when the New York Lubricating Oil Company was negotiating for a contract, Mr. Smith stated to Mr. Harrison that "a representative of the Galena-Signal Oil Company had called his attention to the amount of freight they shipped over his road, and thought that was a sufficient reason for them giving them

their contract," and that Mr. Smith replied that he was not paying rebates in that way. (Vol. 2, p. 510.)

The defendants attempted to offset Mr. Harrison's testimony regarding his contract with the Louisville & Nashville Railroad by showing that after the Galena again secured the business the number of hot boxes and consequent delays to passenger trains, due to mechanical failures, was decreased as compared with the number occurring during the previous contract. For a proper consideration of this testimony it would be necessary to know the cause of the hot boxes, and also to have similar data showing the improvement under the contract with the New York Lubricating Oil Company as compared with the previous Galena contract. The Government made diligent effort to get this information, but the railroad claimed it had not kept such records theretofore. (Vol. 12, pp. 560, 581, 624, 625, 588, and 604.) Imperfect lubrication is only one of the many causes of hot boxes, and the original record from which Defendant's Exhibit 74 was compiled in no way indicates the cause of the hot box. (Petitioner's Exhibit 854, Defendant's Exhibit 75, and Vol. 12, pp. 598 and 625.) Furthermore, Mr. Curtis, superintendent of machinery, in whose office these reports are received, testified that he did not know that any of the hot boxes could be attributed to the oil furnished by the New York Lubricating Oil Company. (Vol. 12, pp. 624 and 625.) The lubrication of railroad rolling stock naturally improves from year to year, from various causes, the chief of which is the increasing care and skill in the whole field of railroad operation. Defendant's Exhibits 13 and 14 show a marked reduction in the number of hot boxes occurring on the Chicago, Milwaukee & St. Paul during the years 1892 to 1907, although the Galena oils were used throughout the period. The Louisville & Nashville had used Galena oils for eight years, and the oils of the New York Lubricating Oil Company for two years, thus giving every opportunity for comparison, before Mr. Curtis, superintendent of machinery, and Mr. Smith, president of the railway, stated, in writing, that they could "say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Oil Company are entirely satisfactory, and I believe them to be as good as any furnished heretofore." This is far stronger evidence

than Mr. Curtis's testimony, when appearing in the present case for the Galena-Signal Oil Company, that he interpreted certain tabulations regarding the number of hot boxes and delays to trains as showing that the Galena oils are better than those of the New York Lubricating Oil Company.

Mr. Harrison also testified regarding the business his company has had with the Central of Georgia at prices much below those of the Galena. (Vol. 2, pp. 514–518.) Beginning about 1897 this railroad purchased the lubricants of the New York Lubricating Oil Company on a gallonage basis without guaranties, and thereby established a very low cost per thousand miles run by its rolling stock. (Vol. 2, pp. 514, 515, and 565.) When the Galena secured its first contract, beginning January 1, 1902, it had to make its guaranties equal to these low mileage costs (Petitioner's Exhibit 507), and during the next three years it received less than 60 per cent of its invoice prices. (Table facing p. 410.) At the end of this period the New York Lubricating Oil Company made a lower bid and again secured the trade. (Vol. 2, p. 516.) This contract was for one year from February 1, 1905, with the provision that it could be canceled at any time by either party giving ninety days' notice, and that it should continue after the expiration of the year until such notice was given. The invoice prices per gallon and the mileage guaranties of this contract are compared with those in the Galena contracts in the statement below, the first column showing the terms of the Galena contract preceding that of the New York Lubricating Oil Company and the third column showing the terms on which the Galena secured the trade after the New York Lubricating Oil Company had had it. All three contracts provided that the invoice prices should be 2 cents per gallon less for oils delivered in bulk. The remaining excess of 2 cents in the invoice prices of the Galena over the regular prices covers extra freight charge for deliveries at Savannah, Ga., and should be deducted to give the net price; and a similar amount should be deducted also from the prices of the New York Lubricating Oil Company, which are delivered prices.

	Galena-Signal Oil Co. (Petitioner's Exhibit 128).	New York Lubricating Oil Co. (Defendant's Exhibit 4).	Galena-Signal Oil Co. (Petitioner's Exhibit 508).
Invoice price per gallon, in barrels, delivered at Savannah, Ga.:			
Valve oil	$0.52	$0.36	$0.52
Engine oil	.32	.20	.32
Car oil	.22	.15	.22
Mileage guaranties:			
Locomotive service	.88	.85	1.25
Passenger-car service	.1139	.10	.10
Freight-car service	.0926	.065	.04

The contract of the New York Lubricating Oil Company was in force for the fifteen months ended April 30, 1906, and the settlement under it is shown in Defendant's Exhibit 4–A. The invoice cost of all lubricants used was $24,895.26, and of this amount $8,700.26 was refunded, making the actual payment for all lubricants used during the fifteen months $16,195.[1]

In order to compare the payment of $16,195 with the invoice prices of the Galena, it is necessary to deduct from it an amount equal to 2 cents per gallon of the oils used, to cover the extra cost of delivering at Savannah. This deduction is $2,372, making the payment $13,823 for the oils, on the basis of the free-delivery territory of the Galena. Applying the invoice prices of the Galena (valve oil, 48 cents; engine oil, 28 cents; car oil, 18 cents) to the gallonage shown in Defendant's Exhibit 4–A, and including the sum charged for grease, the cost of all lubricants used would be $32,048. The amount received by the New York Lubricating Oil Company—$13,823—is only 43.1 per cent of this amount. Thus the prices received by the New York Lubricating Oil Company were only 43 per cent of the invoice prices of the Galena-Signal Oil Company. It is important to note that during the year preceding the contract with the New York Lubricating Oil Company the Central of Georgia paid the Galena-Signal Oil Company only 57.5 per cent of the invoice cost, and during the year succeeding that contract it paid the Galena only

[1] For this comparison the credit to the oil company of $1,198 should not be deducted from the refund, as it is a payment by the railroad company for barrels not returned to the oil company. See sec. 4 of Defendant's Exhibit 4. The contracts with the Galena contained this same provision that the barrels should remain the property of the oil company. See sec. 9 of Petitioner's Exhibits 128 and 508.

48.4 per cent. (*Ante*, table facing p. 410, and vol. 11, p. 471.)

The New York Lubricating Oil Company also had contracts for several years, at very low guaranties, with the Georgia Railroad, which it also lost to the Galena-Signal Oil Company notwithstanding that its lubricants were entirely satisfactory. (Vol. 2, pp. 519–520; and Defendant's Exhibits 2, 2–A, and 2–B.) In order to secure this business, the Galena made contracts under which it received only 53.8 per cent of the invoice cost of the lubricants used during the fifteen months ended May 31, 1907 (*ante*, p. 407), and notwithstanding this low price, the contract beginning June 1, 1907, reduced the mileage guaranties more than 8 per cent. (Petitioner's Exhibits 509–511.)

The New York Lubricating Oil Company has thus had contracts with three railroad companies in recent years, under which it gave entire satisfaction, the lubricants and the services rendered by its experts being in every way as good as the oils and services furnished by the Galena-Signal Oil Company. Notwithstanding this, all three roads gave their business to the Galena at higher prices, without making any explanation to the New York Lubricating Oil Company. Mr. Harrison testified to the widespread efforts which his company had made, without success, to secure business with the railroads; and the company now has none of this trade. (Vol. 2, pp. 505 and 520 to 530.) No other independent company has had any railroad trade in recent years.

The power of the chief owners of the Standard in financial circles makes every railroad management cautious about giving them offense. On many railroads those owners are among the directors and large stockholders. To almost every railroad the Standard is able to make the threat of diverting part of its enormous traffic. By these means it has been able to induce most roads to buy its oil, at prices double those established by competition. In the rare cases where these influences have not sufficed, it has made whatever price has been necessary to get the business. So it has obtained a complete monopoly of the lubrication of railroad rolling stock. Its prices to most railroads are twice the reasonable prices of the oil, and its annual profit on this business is more than 100 per cent on the capital actually used in it.

VII.

UNFAIR METHODS OF COMPETITION.

The evidence on this subject, aside from certain general statistics, relates to practices which have been followed in numerous towns and localities in many parts of the United States. In order to establish the general existence of these practices it was necessary for the Government to introduce a large amount of detailed evidence, which is scattered throughout the entire record. As to many of these cases the defendants undertook to reply to the Government's testimony. We shall here call to the attention of the court in the briefest possible manner only the principal situations proved.

We believe that the evidence shows clearly that the Standard Oil Company and its subsidiary companies have very generally throughout the United States pursued unfair methods of competition against independent concerns, and that these unfair methods have been one of the principal means of securing and maintaining its almost complete monopoly of the business. The most important practice by which the Standard Oil Company has attacked its competitors is local price cutting, resulting in what may be called local price discrimination; that is to say, the Standard sells at low prices where there is competition and recoups the losses there by high prices in places where there is little or no competition. Closely connected with this practice of local price cutting is the payment of secret rebates from the prices openly charged, such rebates being paid particularly to customers who buy or are likely to buy from independent concerns. Another practice which facilitates the policy of local price cutting and of paying rebates is the obtaining of information regarding the shipments and sales of its competitors. The evidence shows that the Standard Oil Company has a most extensive system of obtaining such information, much of it being secured in the first instance from em-

ployees of railroad companies by secret methods. Again, as a means of secretly cutting prices against competitors and of avoiding the prejudice against the Standard Oil Company as a trust and monopoly, the Standard has maintained in many parts of the United States so-called bogus independent companies, which it has owned and controlled but which have been held out as independent.

These are the principal unfair methods of competition shown by the evidence.

LOCAL PRICE CUTTING.

GENERAL STATISTICS.

The practice of unfair competition by means of local price cutting is alleged in the petition (vol. A, pp. 103–104) and is denied by the answer (vol. A, pp. 431–432), where it is claimed that prices are reduced only to meet cuts made by independent concerns.

In the first place, we call attention to the statistics obtained from the Standard Oil Company itself, which show extraordinary differences in the prices which it charges for oil in different towns and different parts of the country, and which shows that these differences correspond largely to differences in the degree of competition encountered.

The Standard Oil Company maintains an elaborate statistical department, which keeps records of the prices charged in individual towns and of the margin of profit of the marketing companies in such towns, as well as the average prices and average profits in the marketing divisions and large marketing territories into which the Standard has divided the United States. In this same statistical department are kept records showing the shipments of the competitors of the Standard and the approximate proportion of the total sales of oil products made by competitors. We shall later point out more fully from the evidence how this information regarding its competitors is obtained and the illegitimate uses which are made of it.

Extracts and copies of these Standard records of prices and of competitive business were introduced by the Government and constitute Petitioner's Exhibits 379 to 396, inclusive. From these detailed exhibits the Government pre-

pared condensed statements, testified to by Mr. Durand. (Petitioner's Exhibits 628 to 635, inclusive.) The latter are merely transcripts and compilations from the figures in the exhibits furnished by the Standard. The original exhibits furnished by the Standard, and still more clearly these condensed statements, show that the Standard Oil Company makes widely different prices in different sections and in different towns, and that these differences correspond largely to the degree of competition.

Petitioner's Exhibit 630, for example, shows the average profits per barrel of the several marketing companies for each year from 1899 to 1906, and the percentage of competitive business in the territory of each. We present herewith the figures for the years 1899 and 1906, taken from this exhibit and reduced to the basis of cents per gallon, omitting the intervening years for the sake of brevity. We have designated approximately the territory covered by each of the different marketing companies or departments listed in the exhibit, such designation being based upon the testimony of officers of the Standard.

Profits of marketing companies on refined oil.

Territories.	1899.		1906.	
	Average profit, in cents per gallon.	Percentage of competitive sales.	Average profit, in cents per gallon.	Percentage of competitive sales.
Kentucky (Standard Oil Co. of Kentucky, south of Ohio River, east of Mississippi)	1.06	8.9	1.26	12.1
Indiana (Standard Oil Co. of Indiana; northern Central States)	1.22	13.6	1.60	12.8
Waters-Pierce Oil Co. (Southwestern States and Mexico)	3.02	8.9	.....	.....
San Francisco (Standard Oil Co. of Iowa; Pacific Coast States)	2.86	5.7	1.80	6.5
Denver (Continental Oil Co.; Rocky Mountain States)	4.36	.2	3.06	1.1
Ohio (Standard Oil Co. of Ohio; State of Ohio)	.94	14.2	1.40	13.3

Profits of marketing companies on refined oil—Continued.

Territories.	1899.		1906.	
	Average profit, in cents per gallon.	Percentage of competitive sales.	Average profit, in cents per gallon.	Percentage of competitive sales.
Winnipeg and Vancouver (western Canada)	2.54	4.8	1.18	21.0
Pittsburg (western Pennsylvania)	.66	15.8	1.60	15.6
New York stations (New York State outside New York City and Long Island)	[a].54	10.8	1.30	5.9
Baltimore (Baltimore division Standard Oil Co. of New Jersey; South Atlantic States)	1.14	6.8	1.54	10.1
Newark (Standard Oil Co. of New Jersey; State of New Jersey)	1.00	5.8	1.48	9.6
Philadelphia (eastern Pennsylvania)	.52	18.7	.84	11.0
New York City (includes Long Island)	.90	4.2	1.82	8.9
Boston (Massachusetts and neighboring territory)	1.06	6.8	1.36	7.3
Providence (Rhode Island and neighboring territory)	1.52	1.6	1.68	6.1
Montreal (territory in Canada)	1.30	3.9	.40	20.9
Maritime provinces (Canada)	.82	4.9	2.68	10.2

[a] For 1899 this figure is given for New York stations and Pennsylvania stations combined.

These profits of the marketing companies are over and above the profits in the refining, transportation, and other branches of the business. The marketing companies buy their oil from the refineries at a certain price, and the profits here presented show the difference between that price and the price obtained by the marketing companies, after providing for the expense of transportation and marketing.

It will be seen that in 1899 the rate of profit ranged from 0.52 cent a gallon in eastern Pennsylvania, where the competitive sales constituted 18.7 per cent of the total, to 4.36 cents per gallon in the Rocky Mountain States, where there was only two-tenths of 1 per cent of competition.

The profits in western Pennsylvania, in New York stations, in New York City, and in Ohio were only one-third to one-fourth of the profits in the Waters-Pierce territory (Southwestern States and Mexico), in the Pacific Coast States, and in the Rocky Mountain States, and the differences correspond broadly to differences in the degree of competition. In 1906 the differences in the profits of the several companies were not quite so marked, but it will be seen that the profits in the Rocky Mountain States in that year were nearly four times as great per gallon as in the eastern part of Pennsylvania.

The disparities in the rate of profit for large areas, such as those shown in the above table, are naturally much less than where smaller areas or individual towns are compared. This appears from Petitioner's Exhibit 631, which compares the prices of refined oil charged by the Standard Oil Company on October 15, 1904, and the corresponding margins of profit, for the larger towns of each State throughout the country. While the differences in the prices themselves are in part due to differences in freight rates and cost of marketing, the "margin" represents the net result after making allowance for freight rates and marketing cost, and is the true measure of the differences in price. This entire table is worthy of the careful attention of the court. We have here selected from one to three towns in each State to illustrate the wide differences in price. We have also presented from Petitioner's Exhibit 390 the percentage of competition in those towns for which the figures are available. In a few cases where the percentage of competition for a single town is not reported we have indicated the percentage in the entire district of which that town is a part, distinguishing these cases, however, by notes.

Price of water-white illuminating oil and margins, on October 15, 1904, by specified towns throughout the United States.

[Red ink indicates loss.]

[Cents per gallon.]

NORTH ATLANTIC STATES.

	Price.	Margin.	Per cent of competition.
Maine:			
Portland	11.50	2.34	0
New Hampshire:			
Nashua	11.00	2.14	4.7
Vermont:			
Burlington	10.00	1.54	1.0
Massachusetts:			
Boston	11.00	2.82	11.3
Fall River	10.50	2.15	0
Springfield	8.00	.88	21.7
Worcester	8.00	.08	5.0
Connecticut:			
Hartford	9.00	.18	21.7
New London	10.00	1.61	28.9
Rhode Island:			
Providence	10.00	1.21	0
New York:			
Binghamton	9.50	1.00	39.1
Buffalo	10.00	2.01	10.4
New York	10.98	2.31	8.6
Pennsylvania:			
Harrisburg	10.50	2.47	10.3
Philadelphia	8.00	.28	[a] 17.6
Pittsburg	8.50	.87	32.8
Delaware:			
Wilmington	8.50	.27	[a] 6.5
New Jersey:			
Newark	11.00	2.60	18.6
Trenton	9.50	.83	[a] 12.4
Jersey City	10.94	2.59	[a] 7.5

[a] Includes city and its substations.

Price of water-white illuminating oil and margins, on October 15, 1904, by specified towns throughout the United States—Continued.

[Red ink indicates loss.]

[Cents per gallon.]

SOUTH ATLANTIC STATES.

	Price.	Margin.	Per cent of competition.
Maryland and District of Columbia:			
Baltimore	8.50	.09	16.5
Frederick	10.00	1.70	.....
Washington, D. C	8.50	.18	.....
Virginia:			
Norfolk	9.50	.68	29.6
Richmond	8.00	a .27	12.0
Roanoke	11.50	2.29	.....
West Virginia:			
Charleston	10.00	2.56	0
Wheeling	9.50	1.66	12.2
North Carolina:			
Wilmington	11.00	1.99	1.1
Raleigh	12.00	1.56	.....
South Carolina:			
Columbia	13.00	2.27	0
Georgia:			
Atlanta	13.00	1.98	0
Savannah	12.50	2.48	1.7
Florida:			
Jacksonville	13.00	3.10	3.9
Tampa	14.50	3.93	.....

NORTH CENTRAL STATES.

Ohio:			
Cincinnati	7.00	1.09	45.3
Cleveland	7.00	.16	11.7
Columbus	9.50	1.72	2.3

a Petitioner's Exhibit 631 is in error in showing this as a profit. The exhibit from the records of the Standard Oil Company, petitioner's Exhibit 391, from which Exhibit 631 was compiled, shows it as a loss.

Price of water-white illuminating oil and margins, on October 15, 1904, by specified towns throughout the United States—Continued.

[Red ink indicates loss.]

[Cents per gallon.]

NORTH CENTRAL STATES—Continued.

	Price.	Margin.	Per cent of competition.
Indiana:			
Evansville	9.00	.05	29.0
Indianapolis	8.50	.12	22.0
South Bend	10.00	1.90	0
Illinois:			
Chicago	8.50	.56	12.7
Decatur	9.50	.08	12.9
Joliet	9.00	.73	18.5
Michigan:			
Detroit	8.50	.24	17.6
Calumet	12.25	2.40	.....
Grand Rapids	9.50	1.14	0
Wisconsin:			
La Crosse	9.00	.17	38.6
Milwaukee	8.50	.65	38.6
Eau Claire	10.75	1.36	.....
Minnesota:			
Duluth	8.50	.88	9.9
Minneapolis	9.50	.24	41.8
Mankato	11.50	2.24	0
Iowa:			
Clinton	10.00	.17	.....
Cedar Falls	12.25	2.10	.....
Des Moines	10.75	.53	41.8
Missouri (not including Waters Pierce territory):			
Kansas City	10.00	.27	24.2
St. Joseph	11.00	1.52	0
Kansas:			
Leavenworth	10.50	.48	.....
Fort Scott	12.00	1.98	.....
Wichita	10.00	.48	32.1

Price of water-white illuminating oil and margins, on October 15, 1904, by specified towns throughout the United States—Continued.

[Red ink indicates loss.]

[Cents per gallon.]

NORTH CENTRAL STATES—Continued.

	Price.	Margin.	Per cent of competition.
Nebraska:			
Omaha	10.00	.41	21.7
Hastings	13.00	1.49	.....
Fremont	12.00	1.45	.....
North Dakota:			
Fargo	13.50	2.10	0
South Dakota:			
Huron	14.50	2.27	.....
Sioux Falls	12.00	.35	.....

SOUTH CENTRAL STATES.

[Exclusive of Waters-Pierce territory.]

Kentucky:			
Louisville	8.50	0.38	16.1
Lexington	11.00	1.54	.....
Paducah	11.50	1.85	.....
Tennessee:			
Chattanooga	13.00	1.73	.....
Nashville	12.00	2.11	0
Memphis	10.50	.18	27.6
Alabama:			
Birmingham	13.00	2.46	11.6
Selma	14.00	2.06	.....
Huntsville	13.50	3.23	.....
Mississippi:			
Jackson	13.50	2.11	.....
Louisiana:			
New Orleans	9.50	1.35	51.2
Baton Rouge	11.00	.21	.....

Price of water-white illuminating oil and margins, on October 15, 1904, by specified towns throughout the United States—Continued.

[Red ink indicates loss.]

[Cents per gallon.]

WESTERN STATES.

	Price.	Margin.	Per cent of competition.
Montana:			
Butte	23.00	5.76	[a]0.8
Wyoming:			
Cheyenne	18.00	4.32	[a]0.6
Colorado:			
Denver	16.00	3.39	0
Leadville	20.00	5.47	0
New Mexico:			
Albuquerque	23.00	6.48	[a]7.0
Utah:			
Salt Lake City	20.00	4.09	[a]0.8
Washington:			
Seattle	15.50	4.17	0
Spokane	21.50	6.10	0
Oregon:			
Portland	15.00	4.12	0
California:			
Los Angeles	7.50	3.16	[a]33.4
Oakland	12.50	2.46	[a]0.3
Sacramento	13.00	2.45	0
San Francisco	12.50	1.73	[a]7.1

[a] Includes city and its substations.

The variation in the prices of oil, as shown by this table, is enormous; they range from 7 cents in Cincinnati, Ohio, to 23 cents in Albuquerque, N. Mex., and Butte, Mont. Only part of these extraordinary differences is due to differences in freight rates and cost of marketing. The margins of profit show most astonishing differences, and these differences correspond largely to differences in the amount of competition. It is not always true that where there is a

considerable percentage of independent business the price is low, for in some instances the Standard Oil Company has agreements and understandings with its local competitors; but, generally speaking, where the independent sales are large the prices and profits are low, and where there is little or no competition the prices and profits are high. At Cincinnati, where there was 45.3 per cent of competition, the Standard sold at a loss of 1.09 cents per gallon; while at Butte, Mont., where there was practically no competition, there was a profit of 5.76 cents per gallon, and at Albuquerque, N. Mex., a profit of 6.48 cents per gallon. (Although there was 7 per cent competition in the Albuquerque territory the differences in price in the different individual towns in that territory indicate that this was mostly in other towns, and not in Albuquerque itself; see Petitioner's Exhibit 391.) Again, at New Orleans, where there was 51.2 per cent of competition, the Standard sold at a loss of 1.35 cents per gallon; while in Spokane, Wash., where there was no competition whatever, there was a profit of 6.1 cents per gallon.

Even within a single State, or in the same general vicinity, extraordinary differences in prices and profits appear. Thus, in Springfield, Mass., where there was 21.7 per cent of competition, oil sold at only 8 cents per gallon, resulting in a loss of 0.88 cent, while at Boston, which should normally take a lower price than Springfield because of water transportation of the oil, the Standard actually sold at 11 cents per gallon, with a margin of 2.82 cents per gallon. It appeared that there was an agreement between the Standard and its competitors in Boston at this time. (See p. 460, *post*.) Again, at Duluth, Minn., where competitors did 9.9 per cent of the business, the Standard sold oil at 8.5 cents, resulting in a loss of 0.88 cent per gallon, while at Mankato, in the same State, where there was no competition, the price was 3 cents higher and there was a profit of 2.24 cents per gallon. At Los Angeles, Cal., where there was a very large percentage of competition, the price was 7.5 cents, resulting in a loss of 3.16 cents per gallon; at Sacramento, on the other hand, where there was no competition, the price was 13 cents, with a profit of 2.45 cents per gallon; and at Seattle and Portland, where one would expect the prices to be about the same as at Los Angeles, they were double, and resulted in a profit of over 4 cents per gallon.

Petitioner's Exhibit 632 (vol. 10, p. 1628) shows the differences in price in another way. It shows the extreme difference between the lowest-price town and the highest-price town in each of the Standard's marketing divisions, about one hundred in all. To determine what is effectively the lowest price, we have taken the town having the lowest margin of profit, though sometimes the actual price there may have been a little higher than in some town more favorably situated; and we have selected the highest price on a similar basis.

This exhibit shows that within many of the marketing divisions into which the Standard Oil Company has divided the country there are extraordinary differences in price and profit between towns. We present here a few of the most striking cases.

Refined oil—Low margins and prices and high margins and prices in the same marketing division, October 15, 1904.

[Losses in red.]

[Cents per gallon.]

Name of division.	Lowest margin.	Highest margin.	Price corresponding to—	
			Lowest margin.	Highest margin.
Albuquerque	0.26	7.12	14.00	23.00
Baltimore	.09	2.11	8.50	11.00
Birmingham	1.56	3.76	13.50	14.50
Cincinnati	1.09	1.86	7.00	11.00
Cleveland	.16	2.48	7.00	10.50
Dayton	.31	1.05	7.50	9.00
Davenport	.04	1.54	10.00	11.50
Decatur	.08	1.98	9.50	11.00
Detroit	.24	2.53	8.50	11.50
Duluth	.88	3.23	8.50	13.00
Dubuque	.19	2.85	10.00	13.00
Joliet	.48	1.80	8.00	11.00
Kansas City	.23	2.66	10.00	13.00
Los Angeles	3.40	.54	7.50	10.50
Louisville	.38	2.10	8.50	13.00
Memphis	.18	2.78	10.50	14.00

Refined oil—Low margins and prices and high margins and prices in the same marketing division, October 15, 1904—Continued.

[Losses in red.]

[Cents per gallon.]

Name of division.	Lowest margin.	Highest margin.	Price corresponding to—	
			Lowest margin.	Highest margin.
Minneapolis	.24	2.58	9.50	13.50
Nashville	.73	3.24	12.00	14.00
New Orleans	1.35	2.46	9.50	12.50
Peoria	.35	2.19	9.50	11.00
Richmond	.27	2.85	8.00	12.00
Sioux City	.35	2.77	12.00	15.00
Springfield	.88	1.29	8.00	10.00
Wichita	.40	3.57	11.00	15.00
Wilmington, N. C	.62	2.79	11.00	14.00

Taking Petitioner's Exhibit 632 as a whole (which covers 101 marketing divisions) it appears that there were 65 divisions in which there was a difference of 1 cent per gallon or more in profit between the town having the lowest margin and the town having the highest; and in 22 divisions the difference exceeded 2 cents per gallon. One cent a gallon constitutes a good profit on the refining and marketing of oil. (Westgate, vol. 6, p. 2879; Bayne, vol. 2, p. 800.) Only the Standard's profits on marketing, exclusive of its immense profits on refining and transportation, are here considered.

Still another way of showing the policy of discrimination in price between competitive and noncompetitive points is illustrated in Petitioner's Exhibit 634 (vol. 10, p. 1634), which compares the prices at the principal towns constituting the main marketing stations of the Standard Oil Company with the average prices in the smaller towns constituting the substations. The main stations, being in general the larger towns, have usually a larger percentage of competition than the small towns, as appears from the statistics furnished by the Standard Oil Company. It appears that consequently in many instances the margin of profit on the

marketing of oil in a main station is very much less than the average margin at all of the substations under that main station. For instance, at Baltimore the price charged by the Standard on October 15, 1904, resulted in a profit of only 0.09 cent per gallon, there being 16.5 per cent of competition; while in all the substations under Baltimore the average margin of profit was much higher, 1.36 cents per gallon, there being only 7.1 per cent of competition in these substations. At Duluth there was a loss of 0.88 cent, while at the substations under Duluth there was a profit of 2.52 cents, the percentage of competition being much larger in Duluth than in the substations. At Memphis, where there was 27.6 per cent of competition, the margin of profit was only 0.18 cent, while in the substations, with only 4.5 per cent of competition, the profit was 2.1 cents.

The comparisons of prices in individual towns which we have thus far mentioned are all as of date October 15, 1904, a date selected merely for convenience and to avoid burdening the court with the enormous mass of details of prices for different dates throughout the country. To show that these differences in price were not confined to a single period of time, however, the Government introduced from the records of the Standard Oil Company the prices of refined oil and the margins of profit thereon for some sixty of the larger towns in the country, month by month, from 1902 to 1906, inclusive. (Petitioner's Exhibit 395.) In Petitioner's Exhibit 635 these same figures are presented, but the towns are arranged in geographical groups and the percentage of competition, as shown in other exhibits obtained from the Standard Oil Company, has been tabulated therewith. This Exhibit 635 shows that throughout this period of five years similar extraordinary differences in price and margin of profit existed. Especially striking is the fact that in many cases the prices in one city show an entirely different direction of movement from the prices in a neighboring city. These differences in movement are clearly due to changes in the degree of competition at different times, as is shown by the percentages of competition.

For instance, compare New Orleans and Atlanta (vol. 10, p. 1646). In January, 1902, the prices at these two cities were the same—10 cents. By October of that year the price

at New Orleans had fallen to 8 cents and the price at Atlanta had risen to 11.5 cents.

Again, the price at Los Angeles (vol. 10, p. 1658) declined from 11 cents in January, 1902, to 7.5 cents in the latter part of 1904, while at Seattle the price rose meantime from 14 to 15.5 cents. The decline in price at Los Angeles was obviously due to the increasing percentage of competition shown by the statistics, while throughout this period there was no competition in Seattle, or practically none.

The Standard Oil Company, of course, cannot deny that these wide differences in price exist, or deny the differences in the margin of profit resulting therefrom, since the figures were taken from the company's records. The defendants, however, have sought to produce evidence showing that in a considerable number of these towns the prices were brought about by price cutting initiated by independent concerns. We shall discuss the evidence on this subject later in this brief; it is sufficient here to say that their contention is neither true nor well founded. Even were it true that the low prices were due to cuts initiated by independent concerns, the statistics we have presented still are conclusive evidence of the monopoly power possessed by the Standard. The fact that it is able in a very large proportion of the towns throughout the country to maintain prices so high that, despite low prices and even losses in some towns, its total profits on the marketing business are enormous, shows emphatically the monopoly possessed by the Standard in the greater part of the country.

That the Standard Oil Company is able to maintain such wide differences between prices in different localities according to the degree of competition is largely due to the peculiar method of marketing employed in the oil industry. Were oil sold at central markets, or through the ordinary channels of wholesale trade, it would scarcely be practicable to charge different prices in different parts of the country, and in particular there could not be conspicuous differences of price among different towns in the same general vicinity. But the Standard Oil Company does not market its principal products, particularly its refined oil and gasoline, in this way. It delivers these products for the most part directly to the retail dealer at his place of business in every city and village

of the United States, and in some places to consumers. The retail dealer who is charged a high price at his own town is not likely to know anything about prices at central markets; but even if he did he could not send there for his oil. If he ships in less than carload lots the freight rates are practically prohibitive, and even if he ships in carload lots he must get the oil in barrels, which involves an additional cost of transportation for the weight of the barrel both from and to the shipping point. Moreover, most dealers do not wish to handle oil in barrels if they can avoid it, and are willing to pay practically half a cent per gallon more for oil delivered at their stores in tank wagons than for the same oil delivered in barrels. (Collings, vol. 12, p. 967.)

The Standard's method of conducting the oil business, moreover, explains why competition is practically confined to a small number of places and to limited areas, and why, therefore, the Standard Oil Company can concentrate its attacks upon these places and areas, charging much lower prices there than elsewhere. Would-be competitors of the Standard Oil Company who seek to ship in barrels are subject to the disadvantages we have above mentioned. If, to avoid these disadvantages, they establish marketing facilities similar to those of the Standard Oil Company, the expense compels them to confine themselves to a few towns. As shown at page 145, vol. 1 of our brief, the Standard Oil Company sells nearly 90 per cent of the oil sold in the United States. Even if all of the remainder were sold by one concern it could not afford to have marketing stations and facilities throughout the United States, as does the Standard; it would have to get a considerable volume of business in each place where it established itself in order to operate with any degree of economy, and would therefore have to confine itself to limited districts. With the independent business divided up among a large number of concerns, as is the fact, this limitation of the area in which they can market oil is naturally all the greater.

Independent concerns being therefore virtually forced to confine their business to limited localities, the Standard Oil Company is able to maintain low prices in such localities while more than recouping the losses or low profits in the vast areas where the independents cannot afford to establish

competitive facilities. There is little doubt that the Standard Oil Company could, if deemed wise policy, absolutely destroy competing concerns in the United States in a very short time. As it is, by the low prices which it usually maintains where there is competition, it prevents these concerns from making enough money to extend their facilities to other places, while it is making an enormous profit on its own business in the aggregate.

We now turn to a brief consideration of the leading individual instances in which the Standard Oil Company has attacked the business of its competitors by price cutting.

ALBANY AND TROY, N. Y., AND NEIGHBORING TERRITORY.

The Hisgen brothers, who had for many years been manufacturers of axle grease and in active competition in that business with the Standard Oil Company, started in the oil business in 1899 or early 1900, buying independent oil and marketing it. Their headquarters were Albany, N. Y., but they did business in a considerable territory in New York and Massachusetts, and later started a tank station and distributing business at Springfield, Mass.

PRICE CUTTING AT ALBANY.

Mr. Henry A. Hisgen testified that immediately before the Hisgens were ready to go into the oil business, in the latter part of 1899 or early in 1900, the bottom dropped out of the prices at Albany and they practically did no business for about two years. (Vol. 4, p. 1947.) His recollection is that the price went down from 12 cents to 6½ cents ultimately. Mr. T. L. Hisgen says that the Standard reduced the price to 6 or 6½ cents. When the Hisgens actually got started at Albany they sold oil as low as 7½ cents, but did not meet the low prices made by the Standard. (Vol. 4, p. 1816.)

The marked difference between the prices at Albany, where there was active competition, and the prices in other cities in New York is vividly shown in Petitioner's Exhibit 635, which compares the Standard's prices of tank-wagon oil delivered at Albany with the prices of the same grade of oil delivered by tank wagons at New York City, month by month, from 1902 to 1906, and which also shows the margins

of profit or loss. The price at New York ought normally to be lower than at Albany, as New York is at the very seat of the largest refineries of the Standard. The exhibit shows that from 1902 to 1904 the price at Albany was most of the time 1 cent per gallon lower than at New York; that in 1905 it was from 1 to 3 cents lower than at New York; and that in 1906 it was for eight months 2.5 cents lower, and during the rest of that year 3 cents lower than at New York. The difference in the profit per gallon shown is about the same as the difference in the selling price. In 1902, during four months, the Standard was selling at Albany at a loss of 0.31 cent per gallon, while there was a profit in New York of from 0.54 cent to 0.79 cent. During most of 1905 the profit at Albany was 0.20 cent per gallon or less, and in two months there was a loss; while in the same months at New York there was a profit ranging from 2.09 cents to 2.84 cents. In the last four months of 1906 there was a loss of 0.12 cent per gallon at Albany, and a profit of 2.74 cents per gallon at New York.

The prices in Petitioner's Exhibit 635 are the open market prices of the Standard. Mr. H. A. Hisgen states (vol. 4, p. 1948) that it was difficult to tell what the prices charged by the Standard at Albany were; that they had a different price for almost everybody. He evidently refers to the practice of giving rebates from the prices of oil. The Government put in evidence of other witnesses to show this practice in Albany.

Wellington Winnie, a storekeeper of Albany, testified that, after he had been buying oil from the Hisgens, Hafley, a salesman for the Standard, offered him a price one-half cent below the Hisgens' price. This offer was made in a conversation in which Hafley indicated the price for which he would sell oil by raising up five fingers on one hand and then one finger and half on the other, indicating 6½ cents. This price was to be made by means of a rebate and Winnie says that Hafley told him that tickets would be made out at the regular price and the amount of the cut returned to him subsequently. (Winnie, vol. 4, pp. 1932–37.)

Hafley, called by the defendants (vol. 12, pp. 737–43), admitted that he used his fingers as Winnie had said, but claimed that in doing so he was simply trying to find out the

price that Winnie was paying the Hisgens. When the question was first put to him whether he had offered oil to Winnie at a cut price he did not answer positively but said he could not remember. After being badgered by defendants' counsel he finally said he had made no such offer. An examination of this witness's testimony in detail will satisfy the court that Winnie's version of the matter is correct, and not Hafley's.

John Ahearn, a grocer at Albany, testified that after he had been buying from the Hisgen Brothers, the Standard's tank-wagon driver, one Wagner, made him a proposition to sell him oil for six months at 2 cents a gallon less than the prevailing price, the 2 cents to be paid as a rebate; that the Standard afterwards refused to keep this agreement, and Ahearn deducted the amount of rebate to which he was entitled from a bill for candles which he owed the Standard, and the Standard never attempted to enforce collection of the amount so deducted. (Vol. 4, pp. 1970–72.)

Wagner, called by the defendants, said in substance that he had played a trick upon Ahearn, that he told him that he was going to give him oil for 2 cents below the market price, when, as a matter of fact, Wagner knew that the market price was to be reduced on the following day. (Vol. 12, pp. 838–42.)

It is evident from Ahearn's testimony, and from the fact that he actually did deduct the rebate, that his understanding was that he was to have 2 cents per gallon rebate from the market price, whatever that price might be, and if this was not Wagner's intention, his scheme was clearly an unfair trick to get business away from the competitor.

H. A. Hisgen testified further that the Hisgens never sold under the Standard Oil Company's price and that the Standard often sold under the Hisgens' price. (Vol. 4, pp. 1948–9.) From the connection in which this testimony was given, it evidently related to Albany; as shown later, the practice of the Hisgens in using their Albany price as a basis in sales to outside towns did, as they themselves claim, sometimes bring their prices in those towns below the Standard's prices.

Thomas McMillan, who was until some time prior to 1903 manager for the Standard at Albany, was called by the

defendants. His testimony corroborates rather than contradicts the testimony of the Hisgens with reference to price cutting at Albany. He admits that the tank-wagon price at Albany on January 1, 1900, was 10 cents, and that it was reduced within a short time to 7 cents. He claims, however, that this was part of a general reduction of prices throughout the entire field of which he had charge, and was not connected with the fact that the Hisgens were about to open up in Albany. Instead, he gives an explanation of the slump in prices by saying that about 1900 the Tiona Oil Company started business at Troy, a city a few miles from Albany, and cut the price a half cent or a cent below the Standard's price, and that the low price in Albany was made because of this cut. (Vol. 12, p. 714.) We shall later consider the situation in Troy and show that the Standard cut prices there as well as in Albany, although it is true that the first prices made by the Tiona Oil Company at Troy were lower than the then Standard's price, a good reason for which will be shown when we come to consider the Troy situation. If the prices in Albany were fixed by the Standard by reason of the prices at Troy, then, as we shall show, the low prices in Albany were really due to the price cutting by the Standard against the Troy concern, even if, perchance, they were not intended especially to attack the Hisgen Brothers.

McMillan admits that for a few months in 1902 the Standard's price for refined oil in Albany was 6½ cents, herein confirming the testimony of the Hisgens that the price reached that figure. McMillan, however, claims that the reason for this price in Albany was that the Tiona Oil Company sent a wagon with two salesmen into Albany and solicited the trade at 6½ cents; that this fact was communicated to him, and that therefore he reduced the price to 6½ cents and kept it there for about two months, until the Tiona people discontinued their trips to Albany. (Vol. 12, p. 716.) This explanation of McMillan is shown to be entirely without foundation by the testimony of L. T. Messner, who was manager of the Tiona Oil Company at Troy at the time in question. He says that no tank wagon of the Tiona Oil Company ever went to Albany with kerosene oil from November 15, 1900, until January 1, 1906; that a tank wagon did go to Albany to supply one single concern—a

laundry—with gasoline and with nothing else; that the Tiona had no other customers in Albany. (Vol. 20, pp. 50, 51.)

L. J. Drake was called by the defendants to explain the price of 7 cents charged by the Standard at Albany for oil during 1905, and he says (vol. 12, p. 766–7) that it was due to the competition of the Tiona Oil Company, of Troy. He introduced Defendants' Exhibit 86, which purports to be a photographic copy of a contract for the sale of oil by the Tiona at 1 cent under the market price. The original was not introduced in evidence, and no proper excuse for its nonproduction was offered. The alleged contract is not signed by anybody, nor does the name of any party appear upon it to whom oil was to be sold. The paper simply lists the location of certain stores, apparently all of which belonged to one owner. These concerns were all located either in Troy or in small near-by towns, and none of them in Albany. We submit that it is absurd for the Standard to attempt to explain all the movements of prices in Albany on the basis of conditions in Troy, in view of the fact that the Hisgens were actively competing at the former place.

Drake was the general sales agent of the Standard for the eastern part of New York, with headquarters at New York City. He was not on the ground. Van Deusen, the local manager at Albany, might have given more definite testimony, but he was not called as a witness. Neither McMillan nor Drake undertook to deny that the Standard sold for less than the Hisgens at Albany. Neither did W. R. King, who has had general charge of the Albany territory for about two years, his office being in New York City. King admitted on cross-examination that rebates had to some extent been allowed in his territory up to a recent period, thus corroborating the testimony of the Hisgens and others. (Vol. 12, pp. 699–700.)

PRICE CUTTING AT TROY.

L. T. Messner, the local manager of the Tiona Oil Company at Troy, testified that his company was, previous to 1900, doing business at Binghamton, N. Y.; that it found that oil was selling at Troy, a city of about 60,000 inhabitants, at 9 cents a gallon, about July 1, 1900, whereas at

Binghamton it was selling at 7.5 cents. The Tiona people therefore concluded to establish a plant at Troy and commenced selling oil there in July, 1900, at 7.5 cents, the same price as at Binghamton, the freight rate from the refinery to Troy being the same as to Binghamton. (Vol. 20, p. 45.) This is the cut at Troy to which McMillan referred. (Vol. 12, p. 714.) Whether it should be considered a cut justifying the Standard in retaliatory cuts is another matter. The general plan of independent companies, as we shall show more fully hereafter, is to make their net price equal at all points. Moreover, it is but a natural practice for independent concerns, which the Standard attacks, by low prices in one town, to carry the war into the enemy's camp by charging the same net prices in other towns where the Standard has previously got excessive prices.

Messner says that the Standard reduced its price at Troy, after the Tiona went in there, to 6½ cents a gallon, and that at various times thereafter the Standard Oil Company or the Troy Oil Works (a bogus independent concern run by the Standard) initiated cuts in prices; that he knows this by seeing the price slips and by talking with the drivers and with the trade; that the Tiona followed the prices made by the Standard and did not initiate the cuts, but that every advance in price was initiated by the Tiona. (Vol. 20, pp. 45–48, 53.)

In reply to this testimony the defendants introduced a statement of the *open* market prices charged by the Standard tank wagons at Troy, according to the records kept at New York City. The price changes shown in this table (vol. 20, p. 477) do not correspond exactly with the changes which Messner says were made; for example, Messner states that the Standard's price was lowered in 1900 to 6½ cents a gallon, whereas the statement shows 7 cents as the lowest *open* price in that year. The presentation of the Standard's *open* market prices is no answer to the testimony of Messner regarding prices; for in the first place he testified that the Standard was constantly paying rebates from the *open* market price, and in the second place the Standard was maintaining at Troy a bogus independent concern known as the Troy Oil Works, which sold oil at prices lower than the Standard's *open* price. Messner knew that the Troy Oil

Works was a Standard concern, and he may have had in mind in part the prices made by that concern. He testified specifically (vol. 20, p. 48) that McKenzie, manager of the Troy Oil Works, came to him one night in November, 1900, and begged him to raise the price of oil, which was then 6.5 cents a gallon, because he, McKenzie, could not live on that price. This was evidently a ruse on the part of the Standard to try to get the Tiona Oil Company to raise prices, or else a ruse intended to make Messner believe that the Troy Oil Works was independent. McMillan, of the Standard Oil Company, admitted in his testimony in this case that the Troy Oil Works was controlled by the Standard and was held out as independent. (Vol. 12, p. 720.) The defendants have put in no testimony to show that the price of the Troy Oil Works was not 6.5 cents at that time, and since the Troy Oil Works sought especially the customers of the Tiona (Messner, vol. 20, p. 49), it was naturally the prices of the Troy Oil Works that were most impressed upon the attention of Mr. Messner.

The defendants sought on the cross-examination of Messner (vol. 20, pp. 61–62) to show that he had cut prices in Troy, and called his attention to Defendants' Exhibit 396, a statement signed by Mr. Messner that he would allow a grocer, Mr. R. W. Munn, 1 cent off the prevailing market price for one year beginning September 24, 1904. Mr. Messner said (pp. 64–68) that this contract was never carried out, because it was repudiated by his superior officers, but that he made it as a retaliation for secret rebates that were being given by the Standard to customers of the Tiona; that whenever he lost a customer he investigated the reasons and in that way learned that the Standard made many secret cuts to customers of the Tiona; that about the time he wrote Defendants' Exhibit 396 he had lost about 20 customers in that way, and that in some instances he saw the check of the Standard Oil Company for these rebate payments. He said that when he discovered these secret arrangements with any given dealer he would offer him a similar arrangement, meeting the price of the Standard; that if he was not able to get him back he would in retaliation go to a customer of the Standard and make him an equivalent

price, telling him why he did so; and that he never made a cut, secret or otherwise, below the cut that had been made by the Standard to his customers. He says that he explained to Mr. Munn, in this particular case, that the arrangement was made with him because the same kind of an arrangement had been made by the Standard with the Tiona's customers, and he mentions in his testimony the name of one of these customers. No witness on behalf of the defendants attempted to deny that rebates had been paid by the Standard in Troy.

The testimony of W. D. Todd, which is uncontradicted and unexplained, throws further light upon this situation at Troy. Mr. Todd is the manager of the Cornplanter Refining Company, of Warren, Pa., which furnishes oil to the Tiona Oil Company, and is also interested in the latter company. Mr. Todd called upon Mr. Jennings, a director of the Standard Oil Company of New Jersey, with reference to the Troy situation. He says (vol. 6, pp. 3215–16):

> My talk with Mr. Jennings was that I considered the business, the way we were conducting it there at that time, it looked to me like a foolish one. After I got through he said: "The argument you put up, Mr. Todd, I can't meet that argument; it is all on one side; it is all on your side, but," he said, "you have got to take into consideration that the Standard Oil Company have to operate differently from what a small concern would." He said, "We have got a policy to pursue, and that is to make it just as difficult for an independent to put out oil as we possibly can; in other words, we want to drive them out of business if we can; if we can't, why, we sometimes buy them out, and sometimes make a dicker; but our first move is to make it just as expensive as we can. Now," he says, "you can readily see this, because if we didn't, where would we be in a few years? The independents would have the bulk of the business." He says, " That is our policy."

PRICES IN TOWNS SUPPLIED BY THE HISGENS FROM ALBANY.

The Standard Oil Company also attacked the business of the Hisgen Brothers in outside towns which they were supplying from their station at Albany. T. L. Hisgen testified that after starting at Albany the Hisgens sold in barrels outside in a considerable territory, extending from Tarry-

town to Saratoga and from Schenectady to Pittsfield, Mass.; that shortly after starting at Albany he made a trip to the towns along the Hudson River, between Albany and New York City, and found the prices 3 or 4 cents higher than the Albany price; that the Hisgens sold oil in these towns at the Albany price, plus the freight, netting the dealer usually less than he had been paying the Standard. He testifies that immediately after he would enter a town the Standard representative would call upon the customers and offer them oil at a lower price than the Hisgens had made; that he, Hisgen, would sometimes be able to sell a customer twice and sometimes only once; and that he used it as an argument in getting trade that, if a dealer would buy once or twice from the Hisgens, the Standard would immediately offer a lower price. (T. L. Hisgen, vol. 4, pp. 1813–15; H. A. Hisgen, vol. 4, pp. 1977–8.)

The defendants made no attempt to contradict this testimony, but sought to turn the tables by presenting evidence to the effect that Hisgen Brothers in various places in New York outside of Albany had cut the Standard's prices. Tank-wagon drivers of the Standard and merchants testified to such cuts at Hastings-on-the-Hudson, Newburg, Stissing, Ravena, and Catskill Station, N. Y. (Doane, tank-wagon driver, vol. 12, pp. 729–37; Palmer, merchant, vol. 12, pp. 810–17; Baxter, merchant, vol. 12, pp. 825–29; Roberts, merchant, vol. 12, pp. 829–31; Arnold, merchant, vol. 12, pp. 833–37; Hicks, merchant, vol. 12, pp. 822–25.)

There is no doubt that the Hisgens did sell oil at times in these towns for less than the Standard's price there at the time. In fact, that is, as we have seen, just what they claimed to have done; the Hisgens adopted the absolutely proper and natural practice of selling oil at a uniform price. They were jobbers, with headquarters at Albany, and their price for oil was based on the Albany price. Any merchant could have sent to Albany and ordered oil from them at the Albany price, paying the freight; and what they did was to go to the merchants and solicit their trade at the Albany price plus the freight. This is the way that all branches of the wholesale business are ordinarily conducted. The reason why the resulting prices were often lower than the Standard's prices in outlying towns is that the Standard does not

follow the normal and reasonable practice of charging uniform prices, but discriminates greatly between those towns where it has competition and those where there is no competition. The policy of the Hisgens to sell oil at the Albany price plus freight, so giving a reduction from the abnormally high prices of the Standard, in no way resembled that which the Standard followed of reducing its price in the particular towns and to the particular merchants where or with whom the Hisgens did business to a basis relatively lower than the Albany price (as the Hisgens testified was done), while charging higher prices elsewhere.

SPRINGFIELD, MASS., AND VICINITY.

It appears that the Hisgens bought out a retail peddling concern, called the Consumers Oil Company, at Springfield, Mass., at some time between 1900 and early in 1902, that they sold oil at retail to consumers in Springfield until about February, 1904, and then established a tank station and began selling oil at wholesale, delivering it to retail dealers in Springfield from tank wagons, and also selling at towns in the immediate vicinity from their tank wagons and in more distant towns in barrels. (T. L. Hisgen, vol. 4, pp. 1803–04.) Even while the Hisgens were confining themselves to the retail business, the Standard maintained very low prices at Springfield, doubtless for the purpose of injuring their business. Petitioner's Exhibit 635 (vol. 10, p. 1636), compiled from the Standard's own record of prices, shows that throughout 1902 and 1903 the Standard's price at Springfield was from 0.5 of a cent to 2 cents lower than at Boston; and from 1 to 3.25 cents lower than at Fall River, where there was no competition. During every month from February, 1902, to October, 1903, the Standard sold oil at Springfield at a loss ranging from 0.22 to 0.88 of a cent per gallon, while it was making large profits at Boston and Fall River, the profits at Fall River ranging from 2.54 cents to 3.42 cents per gallon.

Just before the Hisgens started into the wholesale business, however, there was a marked advance in the Standard's price at Springfield, as in fact there was generally throughout the country. The price rose from 8 cents in October to 11.5 cents in December, 1903. (Petitioner's Exhibit 635.) T. L. Hisgen stated from recollection that when the Hisgens started

in the wholesale business at Springfield the price was 12 or 12.5 cents a gallon (vol. 4, pp. 1817, 1864). He may have been mistaken somewhat in this price, but the Standard's own record shows a price of 11 cents a gallon in February, 1904, the month the Hisgens started. Mr. Hisgen testified that the Hisgens began selling at the same price as the Standard; that within a few weeks the Standard reduced the price to 9 cents, and then by half-cent changes gradually to 7 cents; that the Hisgens met the cut until the price reached 7.5 cents, when they stopped and appealed to the trade to stand by them at that price, claiming that they could not sell lower except at a loss. (T. L. Hisgen, vol. 4, pp. 1817, 1864.)

Geo. Tuthill, called by the defendants, testified that he was special agent for the Standard in the Springfield territory; that when the Hisgens started in the wholesale business at Springfield the Standard's price was 11 cents, and that the Hisgens sold at 10.5 cents (vol. 12, p. 782); that the Standard met this price, and later it was reported to him that the Hisgens had cut again and that the Standard met this price; that the prices went on down to 7.5 cents, after which there was still another reduction of one-half cent by the Standard, which was general throughout Tuthill's division. He also stated on direct examination (p. 784) that it was reported to him that generally throughout the territory the Hisgens had cut prices first in order to get business away from the Standard, and he said that the Standard was obliged to meet the cuts in order to hold its trade. On cross-examination Tuthill admitted that the Hisgens continued to sell at 7.5 cents when the Standard was selling at 7 (p. 785). He had stated on his direct examination that he did not know the reason for this reduction in the Standard's price to 7 cents. He also admitted on cross-examination that all he knew about the lowering and raising of prices by the Hisgens was from the reports made by the Standard's drivers (p. 784). He was unable to swear that rebates or drawbacks from the open price had not been paid by the Standard at Springfield (p. 788). We submit that since Tuthill had jurisdiction over a considerable territory, while T. L. Hisgen, who gave the testimony regarding the price, was on the ground, the latter was in a better position to know who cut the prices first; and certainly the reduction

which the Standard made to 7 cents was not justified by any trade conditions other than the desire to destroy the business of the Hisgens. This appears clearly from the fact that the Standard was losing money at Springfield even before it cut the price to 7 cents, and lost still more after that reduction. Petitioner's Exhibit 635 shows that from March, 1904, to November, 1905, with the exception of one month, the Standard was losing money at Springfield, the losses ranging from 0.13 cent to 0.88 cent per gallon.

The Hisgens testified to numerous cases in which widely different prices were maintained by the Standard Oil Company at different towns in the neighborhood of Springfield, accordingly as the Hisgens were competing or not. Even without this testimony we should have abundant evidence, from the records of the Standard, of the great discrimination in prices in Massachusetts. The following table, taken from its records (Petitioner's Exhibit 391), shows the prices and margin of profit or loss on October 15, 1904, at different towns in the Springfield division (including all the towns for which the figures were furnished), and in comparison we have also given the corresponding figures at some of the leading cities in Massachusetts outside of the Springfield division.

[Cents per gallon.]

Station.	Selling price.	Margin.
Springfield division:		
Springfield	**8.00**	**Loss 0.88**
Barre Plains	9.50	Profit 1.24
Greenfield	10.00	" 1.29
Lee	10.00	" 1.29
Northampton	9.50	" .79
Shelburne Falls	10.00	" 1.29
Ware	9.50	" 1.24
Cities outside of Springfield division:		
Boston (East Boston)	11.00	" 2.82
Fall River	10.50	" 2.15
Lowell	10.50	" 1.72
Lynn	11.00	" 2.61
Brockton	11.00	" 2.18

Petitioner's Exhibit 635 shows not only the losses in Springfield during the years 1904 and 1905, but shows an extraordinary discrepancy between the prices there and the prices at Boston and Fall River. During most of 1905, for example, the price at Springfield was 7 or 7.5 cents, and at the same time the price at Boston was from 9 to 10 cents, and at Fall River from 9.5 to 10.5 cents. While the Standard was losing during 1905 from 0.2 cent to 0.73 cent per gallon in Springfield, it was making a profit of from 2.32 cents to 2.94 cents in Boston, and from 2.85 cents to 3.4 cents in Fall River; and almost equally great differences existed throughout the period from 1904 to 1906, inclusive.

We shall briefly refer to a few of the instances of differences in the Standard's price between different towns and different dealers brought about by the competition of the Hisgen Brothers in this territory, as testified by T. L. Hisgen. The Hisgens drove out with their Springfield tank wagons to towns in the vicinity, sometimes at a considerable distance.

At Thompsonville, Conn., the Standard was selling at 10 or 11 cents per gallon, while it was selling at 7 cents at Springfield. The Hisgens began selling at Thompsonville from their wagons at 7.5 cents, their Springfield price, when the Standard reduced the price to 7 cents per gallon. (Vol. 4, p. 1817.)

Subsequently a similar thing occurred at Windsor Locks, Conn., where, after the Hisgens started selling, the Standard reduced its price to 7.5 cents per gallon from a much higher figure. (Vol. 4, p. 1818.)

While the Standard was selling at Windsor Locks at 7.5 cents it charged 9 cents at Windsor, 5 miles below Windsor Locks, which the Hisgens did not reach with their tank wagon. (Vol. 4, pp. 1820–21.) The Hisgens finally went to Windsor and called the attention of the merchants to the difference in price between that place and Windsor Locks, whereupon the Standard reduced the price at Windsor to 8 cents.

It still maintained a price of 9 cents at Windsor Hill, across the river from Windsor, although it had to haul the oil a shorter distance to reach Windsor Hill than Windsor. (Vol. 4, pp. 1820, 1821; see also tank-wagon tickets from

Windsor and Windsor Hill, Petitioner's Exhibits 636 and 637.)

At Tariffville, Conn., in 1905 or 1906, the Standard was selling oil at 11 cents, while its price at Springfield was 7 cents. The Hisgens sold oil there to a man named Sanford, whereupon the Standard Oil Company made a contract with Sanford to furnish him oil at 8.5 cents per gallon, while maintaining the 11-cent price to other dealers. The oil sold to Sanford was brought in tank wagon from the Collinsville, Conn., tank station, and at Collinsville the price was 11 cents per gallon. This contract with Sanford was offered in evidence, Petitioner's Exhibit 638. (T. L. Hisgen, vol. 4, pp. 1821–24.) See also Petitioner's Exhibits 639 to 641, tank-wagon tickets showing the price at Collinsville.

This last transaction was a case of a rebate made to a particular customer by which he got a lower price than other dealers. The same practice was pursued by the Standard in many other instances. Geo. Z. Dean, a merchant at Cheshire, Mass., testified that T. L. Hisgen called upon him in 1902 and told him that the Standard was making a lower price to Mr. Bowen (one of Dean's competitors in the same town) than it was to Dean. Dean knew that Bowen had received a carload of independent oil previously; this was doubtless the reason for the lower price. Hisgen told Dean that the only way he could get a lower price was by buying some independent oil, which Mr. Dean did. Shortly afterwards Akin, manager of the Pittsfield branch of the Standard, and Tuthill, general manager at Springfield, called upon Dean and gave him a contract for oil at a price 1 cent or 1.5 cents per gallon less than he had been paying. He paid the open market price in the first instance and afterwards received the difference as a rebate. (Vol. 4, pp. 1891–1894.) Hisgen also testified to the same general effect regarding this transaction. (Vol. 4, pp. 1826–27.) This arrangement with Dean was renewed from time to time until 1905, when the Standard refused to give Dean as good a contract as he had before. He then went back to Hisgen Brothers, when the Standard people came around again and made a still better contract with him. (Vol. 4, p. 1894.)

J. H. Kelly, a grocer of Pittsfield, Mass., who had been buying from the Standard, testified that in 1906 he began buying oil from the Hisgens, and that Akin, the agent for the Standard at Pittsfield, offered to fill his tank with oil free of charge if he would thereafter buy from the Standard (vol. 12, pp. 1905–1907).

John Driscoll, a grocer at Pittsfield, testified that when he began to buy from Hisgen Brothers the Standard's manager at Springfield offered him a reduction of 1.5 cents from the regular price, and later an additional one-half cent (vol. 4, pp. 1910–1918).

Geo. T. Mandigo, a grocer of Pittsfield, testified that he told Akin, the Standard's agent, that he was going to buy oil from the Hisgen Brothers; that shortly thereafter Mr. Akin met him on the street and handed him a handful of silver, and although nothing was said about it, he understood it was to keep him from buying oil from the Hisgens. Mandigo continued to buy from the Standard, and on one or two occasions afterwards Akin came into the store and gave him some money, which Mandigo figured out to be about one-half cent a gallon on the oil he had purchased. (Vol. 4, pp. 1963–64.)

It is unnecessary to enter into further details as to this testimony regarding the payment of rebates and the making of special prices to dealers who bought from the Hisgens, in view of the testimony of Akin himself, who was put on the stand by the defendants. T. L. and H. A. Hisgen had testified (vol. 4, pp. 1834, 1978) that Akin came to them about the time they opened their branch at Pittsfield and said that he had decided to quit the service of the Standard; that no man could work for the Standard and retain his honor; that his most disagreeable duty was to go to the depot and watch the barrels which the Hisgens had shipped, and that he was allowed to give only 1 cent rebate from the prevailing price, while he was satisfied that at Providence the agents were allowed to give larger rebates; and he wanted to enter the employment of the Hisgens. Mr. Akin on cross-examination admitted enough to establish the truth of what the Government claims with reference to the competitive methods in that territory. He admitted having told the

Hisgens that he did not want to work for the Standard any longer. He said that he did not like the Standard's practice of having more than one price; that there were some customers to whom the Standard sold oil in a given quantity at a less price than to others; that he told Tuthill, his superior officer, that he did not like it. He also testified that he did not like the idea of going to the depot and checking over the barrels shipped by competitors. He said that about 1906 the Standard changed its policy and made one price throughout the district. (Vol. 12, pp. 757–760.) Tuthill was called by the defendants and contradicted Akin (vol. 12, p. 788), testifying that Akin never complained to him about the practice of making different prices to different persons. It is immaterial whether Akin's testimony regarding his complaints to his superior is correct or not, since his testimony that differences in price were made is undisputed.

Mr. Tuthill, the Standard's Springfield agent, attempted to give the impression that it was always the Hisgens who had cut the prices first, not only in Springfield but in outside towns in the Springfield territory. We have already discussed his testimony as to Springfield itself. He states (vol. 12, pp. 780, 781) that in December, 1903, the Standard was selling oil at Easthampton, Mass., at 11.5 cents, and that the Hisgens started in selling there at 9.5 cents; that again, in April, 1905, the Hisgens went to Easthampton and sold oil for 7.5 cents, which was less than the Standard's price, and he introduced a letter which he had written to Watt, his superior officer, quoting a report from a salesman regarding this cut. The Standard's price at that time, he says, was 8.5 cents. (Vol. 12, pp. 781, 782.) Mr. Tuthill had corrected himself as to the date of this second transaction from 1904 to 1905, and we suspect he was mistaken as to the date of the first transaction. The report which he refers to speaks of the Hisgens as selling in Easthampton in 1905 from a tank wagon driven from Springfield. Tuthill said nothing as to the method by which the Hisgens sold in December, 1903, but testified that they did not start their wholesale business at Springfield until February, 1904, and it appears highly improbable that they were selling at Easthampton at all in December, 1903. If they were they must have been selling

in barrels, and since the prices in barrels always include the value of the barrel, Mr. Tuthill could hardly have failed, if he knew anything about the facts, to have ascertained the price including the barrels, and explained how the net price of 9.5 cents was brought about by deducting the value of the barrel. If the sale was a tank-wagon sale, it must have been as late as February, 1904, and was presumably at the Springfield price. The case at Easthampton in 1905, if correct, was simply one of the instances, similar to those already described, where the Hisgens made the Springfield price a basis for prices in outside towns reached by the Springfield tank wagons, notwithstanding the fact that the Standard, by its discriminatory policy, had much higher prices in such outside towns than at Springfield. It is true that in some instances where the Hisgens sold in towns outside of Springfield, either from tank wagons or in barrels, taking the Springfield price as their basis, the result was to make a price lower than the Standard charged in such outside towns, but that is merely evidence of the Standard's discriminatory policy in having such differences in price.

On this point of alleged price cutting by the Hisgens, the defendants will doubtless call attention to the testimony of Dean and Mandigo, who were witnesses for the Government, to the effect that about 1905 the Hisgens started a tank station at Pittsfield and sold oil at 9 cents, while the Standard's price was 10.5 cents. A full consideration of the circumstances will show the reasons for this action and will show how the Standard thereafter attacked the Hisgens' business in Pittsfield. During 1905 the Standard's price at Springfield, which was the Hisgens' headquarters, was from 7 to 8.5 cents. While the Standard was selling at 7 cents in Springfield, the Hisgens had refused to go below 7.5 cents and had asked the merchants there to stand by them. The Standard was charging far more at Pittsfield than it was at Springfield, although the towns are not far apart; its price of 10.5 cents at Pittsfield was unreasonably high. The Hisgens, very naturally, sought to retaliate at Pittsfield against the low price which the Standard was maintaining at Springfield. As Dean and Mandigo testified, the Hisgens told the dealers at Pittsfield that they could not afford to sell for less

than 9 cents, and asked them to agree to take oil at that price for a year. (Dean, vol. 4, pp. 1894, 1895; Mandigo, vol. 4, pp. 1963–1966.) The Standard immediately cut the price to 7.5 cents per gallon and has kept it there ever since, while the Hisgens continued to charge 9 cents and retained a considerable trade. Mr. Dean says that a feeling prevails among the merchants that, if it had not been for the competition of the Hisgen Brothers, they would be paying even more than they are paying that concern, and for the sake of keeping competition there they are willing to pay the extra price above the Standard's price. (Vol. 4, p. 1895.)

PRICE SITUATION AT BOSTON.

W. D. Todd, of the Cornplanter Refining Company, of Warren, Pa., testified (vol. 6, pp. 3216–18) that about 1897 the Cornplanter Company bought out the New England Oil Company, a concern doing a tank-wagon business in Boston, and thereafter operated it; that the Standard shortly after this purchase lowered its price of oil in Boston from 10 cents to 6.5 cents, half a cent at a time; that the New England Oil Company followed these cuts and in retaliation adopted the policy of extending its business into other towns in Massachusetts and Rhode Island, and selling there at the same prices which prevailed in Boston. The New England Oil Company continued this fight about a year and a half, and worked up a large trade, but on account of the low prices was losing money; it lost altogether from $30,000 to $35,000. Finally Mr. Royal, the local manager of the New England Oil Company, entered into an arrangement with the Standard whereby the New England Oil Company was allowed to market a carload of oil a day in Boston, withdrawing from the outside territory. This reduced the business of the New England Oil Company from about 125 carloads a month to 25 or 26 carloads a month. Immediately thereafter the prices of oil at Boston went up 3 or 4 cents, reaching 10 cents a gallon. The original arrangement was for three years, but it was afterwards renewed and was in force until 1906.

This agreement explains the very high prices in Boston during recent years shown in Petitioner's Exhibit 635, to which we have previously referred.

PRICE SITUATION AT PHILADELPHIA.

The price situation at Philadelphia was first taken up by the defendants. H. O. Rodgers, general manager of the domestic trade department of the Atlantic Refining Company, and Leopold Frye, superintendent of the Fairmount station of the Standard in Philadelphia and prior thereto general salesman in Philadelphia, were called upon to explain the reductions in the Standard's price of refined oil in that city in 1903 and 1905, as shown in Petitioner's Exhibit 395. This exhibit shows that the price at Philadelphia fell from 10 cents in March, 1903, to 7 cents in August and September, with a reduction in the margin per gallon from a profit of 1.72 cents to a loss of .34 of a cent; that the price advanced to 11 cents at the end of 1903 and then fell to 8 cents toward the close of the year 1904, resulting in a decline in profits from 2.16 cents to 0.16 of a cent; and that the price was further reduced to 7 cents in 1905, although the profit increased somewhat, presumably because of a reduction in the price charged for the oil by the refinery to the marketing company.

Rodgers said (vol. 15, p. 2425) in explanation of the reduction in price beginning in April, 1904, that he received through the tank-wagon salesmen reports that Charles K. Smith & Co., an independent concern in Philadelphia, were cutting prices, and that this was the reason for the cuts made by the Atlantic Refining Company, other than those due to a reduction in the price charged by the refinery.

Frye said that in 1902 Charles K. Smith & Co. changed from barrel delivery to tank-wagon delivery and for about two months in that year sold oil for one-half cent less than the Atlantic Refining Company price; that in April, 1903, they again cut the Standard's price one-half cent and the Standard lost about 600 customers; that he did not remember what Smith & Co.'s price was, but it might have been 5 or 5.5 cents at times. (Vol. 15, pp. 2411–2413.) On cross-examination he could not give even approximately the date when Smith & Co. were selling at 5.5 cents or at 6.5 cents, and was very much confused about dates and prices, but still asserted that the price of Smith & Co. much of the time was one-half cent under the Standard's price. (Vol. 15, pp. 2414–2415.)

Charles K. Smith was called by the Government on rebuttal and testified (vol. 20, pp. 229–31) that when his concern began to sell in 10-gallon cans or from tank wagons, which took place some time between 1900 and 1902, it first sold at the regular prices of the Atlantic Refining Company; that later the Atlantic Refining Company put on extra wagons without any name on them, which went to the trade that the independents were supplying and made a price from one-quarter to one-half cent less, or whatever was necessary to get the customer away from the independents; that there were four or five of these wagons, and that he saw one of them himself which was being driven by a man named George Hill, who had formerly worked for Charles K. Smith & Co. and knew their customers, and that this driver, Hill, made cuts in prices to those customers. He said that these wagons were first put on and commenced cutting prices in the latter part of 1903, and that the Atlantic Refining Company charged higher prices to its regular customers than these special wagons charged. These special wagons were run for about a year and a half, until some time in 1905. In view of this situation, Charles K. Smith & Co. met the price of the special wagons, which Mr. Smith calls "fake" wagons, and also retaliated by going to the trade of the Atlantic Refining Company with the same cut price, wherever possible securing the tank-wagon slips of the "fake" wagons exhibiting their prices, in order to show them to the customers of the Atlantic Refining Company. Mr. Smith testified also that his company never cut the price below that which was being made to its customers by these special wagons.

Frye had also testified that Charles K. Smith had told the people that as long as the Atlantic Refining Company was in business he would sell at one-half cent less than that company. Mr. Smith positively denies that he ever made any such statement. (Vol. 20, p. 233.)

Here we have therefore the familiar situation of the Standard, by a secret arrangement, cutting prices to the customers of independent concerns, while maintaining higher prices to other customers, and then claiming that because the competitors met these cuts it was the competitors who were cutting prices.

PRICE SITUATION AT BALTIMORE.

The defendants sought to prove that the low prices in Baltimore, particularly in 1904 and 1905, were due to price-cutting initiated by independent concerns, especially the Crew-Levick Company. Bruce Robinson, called by the defendants, testified (vol. 16, p. 2612–13) that he was tank-wagon superintendent for the Standard at Baltimore in 1904 and 1905, and that the reason why the Standard's price there declined from 10 cents in March, 1904, to 7 cents in September was on account of the cutting of prices continually by the Crew-Levick Company. He also says that the reduction in prices in the summer of 1905 was due to the fact that markets usually decline in the summer time and also that the Crew-Levick Company was cutting prices. He says further that the cut prices made by the Crew-Levick Company through 1904 and 1905 were made only to a portion of their trade, and that all the Crew-Levick tank-wagon tickets that he saw were made out at the open market price, but that the buyers were actually getting a lower price. He gave a list (vol. 16, pp. 2615–19; vol. 13, pp. 1112–13) of 42 customers who he says were taken away from the Standard by the Crew-Levick Company during the years 1904, 1905, and 1906 at prices lower than the Standard's.

Geo. J. R. Wolff, Baltimore manager of the Crew-Levick Company, testified on rebuttal that in 1904 the Eagle Oil Company, managed by L. Blaustein and holding itself out to be independent (we shall discuss this company more fully later on; there is no denial that it was controlled by the Standard), began a war against the Crew-Levick Company, cutting the price half a cent to its trade; that the Crew-Levick Company had to meet the Eagle Oil Company's price, thus bringing its price below that of the Standard; that the Eagle continued to cut and the Crew-Levick Company followed the Eagle's price until it reached 7 cents per gallon, when the Crew-Levick stopped, although the Eagle went on down and sold at 6 cents. He says that at this time the Crew-Levick Company was selling oil at 7 cents, the Standard at 8, and the Eagle at 6, with corresponding differences in the price of gasoline. He says further that Blaustein went out openly on the street and dared the Crew-Levick Company to

come down to 6 cents, saying if they did so the Eagle would sell at 5. (Vol. 20, pp. 71, 72.)

Wolff testified that, when this fight was going on and the Eagle's price was below the Crew-Levick Company's, he went to the Crew-Levick customers and told them that he could not sell any lower, but asked them to continue buying from the Crew-Levick Company, and promised them that later on, when the price was advanced and the fight was over, he would allow them for the same period of time a reduction in price equal to that which they could get from Blaustein during the fight, and that his customers accepted this proposition. (Vol. 20, p. 72.) On cross-examination he explained that instances in which the Crew-Levick Company gave rebates from their open oil prices to certain customers were instances occurring in the latter part of 1904, when he was carrying out this promise made to his customers, giving them a special price to offset the special price which Blaustein had offered earlier in the year. (Vol. 20, p. 118.)

Mr. Wolff stated further (vol. 20, p. 119) that in 1905 Blaustein began fighting the Crew-Levick Company again, going around to its trade and offering the oil at a half cent off the market price, and that the Crew-Levick Company openly met this reduced price; although it made out its tank-wagon tickets at the regular price, the half cent was deducted immediately and not rebated subsequently. He said that this condition continued largely during 1905.

Mr. Wolff also took up in detail the cases of the 42 customers whom Robinson had said the Crew-Levick Company had taken away from the Standard. Without reviewing this testimony in detail (vol. 20, pp. 77–90) it may be stated that Wolff asserts that to all but four of these customers the Crew-Levick Company did not cut prices except to meet prices made by Blaustein, and that the four exceptions were special arrangements which he made with the Standard Oil Company's customers in retaliation for customers that Blaustein had taken away from the Crew-Levick Company. He says that when Blaustein was cutting his prices, for the purpose of carrying the war directly into the business of the Standard Oil Company for whom Blaustein was acting, he, Wolff, went to customers of the Standard and sought to create dissatisfaction among them; that he made a proposition quite generally that they should buy from him for a

single week, saying that if Blaustein did not come around and offer a lower price within thirty days they should have that week's supply at a half cent less than the market price, but if he did come around they should pay the full price; that the customers accepted this proposition and that in all instances within less than 14 days Mr. Blaustein was there with lower prices. (Vol. 20, pp. 75, 76.) The effect of this practice of Wolff was to bring an end to the price-cutting war of Blaustein against the Crew-Levick Company's trade.

These statements of Wolff explain the testimony of Robinson and fully explain how the Crew-Levick Company's prices came to be lower than the Standard's open market prices. Wolff knew perfectly well that the Eagle Oil Company was controlled by the Standard, and the prices which he made were not lower than those of the Eagle Oil Company, but in fact were higher much of the time. Robinson, indeed, on cross-examination admitted (vol. 16, p. 2621) that he knew that during part of this time the Eagle was cutting prices, but said that he did not know how much the Eagle was cutting the prices of the Crew-Levick Company if at all, although he kept very well posted as to Crew-Levick's business from day to day right straight along.

Blaustein, whose testimony regarding the various bogus independent concerns which he operated we shall review more fully later, wherein we show his testimony is very unreliable, admits (vol. 15, p. 2465) that the prices of the Eagle Oil Company at Baltimore were lower than the Standard's open-market prices, thus confirming Wolff's testimony. He says, however, that he did not sell below 6.5 cents and that the Crew-Levick Company were selling to all their customers at 6.5 cents, and that the Standard's price at the same time was 7 cents. It may be that Blaustein's *open* price was 6.5 cents; Wolff says that Blaustein allowed rebates from his open prices. (Vol. 20, p. 74.) Blaustein did not specifically deny that he paid rebates during this period; on the contrary, he carefully guarded his testimony on that point. The following is his testimony on direct-examination by defendants' counsel (vol. 15, p. 2479):

> Q. Did the Eagle Oil Company offer or pay any rebates to the trade which you handled there in Baltimore?—A. When?

Q. In Baltimore; the Eagle Oil Company.—A. What year was it?

Q. When the Eagle was operating there in Baltimore.—A. When we first started?

Q. Yes.—A. No, sir.

Nobody claimed that the Eagle paid rebates when it first started, which was in 1901. The efforts of defendants' counsel to get the witness to state that he had not paid rebates at other times were unsuccessful.

Blaustein claimed, moreover, that the Crew-Levick Company had started the price cutting of 1904. He introduced a photographic copy of a contract between the Crew-Levick Company and J. W. Crook which provided that from January 1 to May 1, 1904, the Crew-Levick Company would furnish Crook oil at three-quarters of a cent per gallon below the regular tank-wagon market price, from May 1 to October 1, at one-half cent below the market price, and from October 1 to January 1, 1905, at three-quarters of a cent below the market price, with similar reductions on gasoline. (Defendants' Exhibit 210.) He says that he learned of this contract from Mr. Crook at the time it went into effect, about January, 1904; that he went to Crew-Levick Company's trade and told them about it; that this forced the Crew-Levick Company to make an open cut of half a cent a gallon to all its trade, and that he, Blaustein, was compelled to reduce his price to hold his business. (Vol. 15, pp. 2461–65.) It appears, however, that Mr. Crook had a large number of grocery stores—Mr. Blaustein says about 18—scattered all over Baltimore. We submit that a special price made to a concern of this size was entirely reasonable and justifiable, and was no excuse for Blaustein's selling to all the Crew-Levick Company's trade at prices lower than those which the Crew-Levick Company could afford to make. Moreover, Wolff says the Standard and the Eagle always allowed Crook rebates. (Vol. 20, p. 100.) In any case, the Standard Oil Company was not justified in using a bogus independent concern to retaliate for such a transaction. The significance of this entire situation will appear more clearly when we come to consider the evidence regarding the bogus independent concerns operated by the Standard at Baltimore.

PRICE CUTTING AGAINST THE RED "C" OIL COMPANY.

The Red "C" Oil Company is an independent concern having headquarters at Baltimore and buying its oil from independent refineries in Pennsylvania. W. H. Fehsenfeld is its president. It sells oil from tank wagons in Baltimore, and in barrels quite generally through the South Atlantic States. It has no tank-wagon service except at Baltimore, but some of the stockholders of the Red "C" Company are interested in a company which has a tank-wagon service in and about Washington, D. C., also in a company which has such service in Richmond, Va. To other places the Red "C" shipments are made in barrels or in drums from Baltimore. (Fehsenfeld, vol. 5, pp. 2330–32.)

Fehsenfeld testified that for some years prior to 1897 he was a traveling salesman for the Red "C" Company through the South; that the Standard as well as the Red "C" was then selling chiefly in barrels in that territory; that he was continually followed by the salesmen of the Standard, who sought by making special inducements to certain customers in a town to prevent him from making up carloads to be shipped to that town. The Standard, he says, gave rebates or concession prices to one, two, or three of the important merchants of a town to prevent the Red "C" from securing sufficient orders to make up a carload. After he had obtained orders the Standard salesmen would in some cases get them countermanded. It was very important to the Red "C" to make up car shipments so as to get the carload rates of freight and thus be able to compete with the Standard, which shipped in carloads. (Vol. 5, p. 2303.)

He testified further, as illustrating the methods of the Standard during this period, that in his traveling at one time he had been trying to elude George Cowey, a salesman of the Standard; that Cowey caught up with him at Yorkville, S. C., and remarked to Fehsenfeld that he was sorry he had to hound him in such a way, but that those were the instructions he had received from the Standard Oil Company, and that his instructions were to stay at Yorkville thirty days if he could thereby keep Fehsenfeld from selling a carload of oil. (Vol. 5, p. 2307.) Fehsenfeld testified also that at this period of time the merchants were afraid to buy independent oil because the Standard would frequently

cause oil to be retailed by their competitors so low that no profit was left; that he would not be able to sell another carload of oil in a town until the merchants had forgotten to a large extent the experience following their previous purchase of independent oil. (Vol. 5, p. 2310.)

W. H. Metzel, who for many years has been a traveling salesman for the Red "C" Company, testified that the agents of the Standard made it a practice to follow him over his route; that on the next train after he arrived in a town a Standard salesman would appear, and would go to the people to whom he had sold and induce them to cancel their orders by cut prices, especially seeking to break up carload shipments; that the salesman of the Atlantic Refining Company in Pennsylvania was especially strenuous in this respect and would follow up every carload that Metzel had sold before the oil would arrive and often succeed in countermanding the order; that he, Metzel, had had as many as four telegrams in one day canceling orders; and, further, that R. N. Greathead, a salesman for the Standard, had told him that he was instructed to follow Metzel wherever he went and undo as much of his business as possible. (Vol. 5, p. 2406–7.)

H. C. Boardman, who during the period covered by this testimony was employed by the Standard Oil Company, says that about ten years ago the Standard sent him to Washington, Ga., where the Red "C" Oil Company had shipped a carload of oil, and directed him to make arrangements with a retail dealer named Almond to retail oil at 5 cents a gallon. At this time the retail price in Augusta, a much larger town, was 15 cents. He states that this arrangement continued about four weeks and it made the merchants who had bought oil from the Red "C" Company very much dissatisfied because they were unable to sell it. (Vol. 5, p. 2176.)

The attention of C. T. Collings, vice-president of the Standard Oil Company of Kentucky, was called to this statement of Boardman (vol. 12, p. 913) and he said that it was not true, and then said that it would be absurd to make such a price in an interior town, and that he did not believe the Red "C" Oil Company ever sold a carload in that town. How can Collings know anything about these facts? His belief on the subject is of no value. His headquarters are at

Cincinnati, and he can not be expected to know about all the transactions in the great territory of the Standard Oil Company of Kentucky, which covers a number of States. We shall present later undisputed evidence that the Standard did make arrangements at times with retail dealers in this territory to sell oil at cut prices, and there is nothing inherently improbable in the situation testified to by Boardman.

The evidence of these witnesses regarding the practice of the Standard in following up the business of the Red "C" Company is abundantly corroborated by a number of letters passing between different officers and agents of the Standard Oil Company of Kentucky, which were introduced in evidence by the Government in connection with the testimony of E. N. Wootten. While some of these letters are carbon copies unsigned, there is no denial of Mr. Wootten's statement that they were written by R. N. Reed, the Standard's special agent at Atlanta, and sent to the persons to whom they were addressed. Mr. Collings in his testimony discusses the various situations referred to in them and attempts to explain them away. Nearly all of these letters relate to certain carload sales made or attempted to be made by a traveling salesman of the Red "C" Oil Company at various points in South Carolina during January and February, 1904.

R. N. Reed, the special agent at Atlanta, was in charge of this South Carolina territory. He wrote often to Mr. Collings, vice-president of the Standard of Kentucky, regarding the situation and received answers from Mr. Collings. He also corresponded with the local agents in the towns in South Carolina concerned.

Petitioner's Exhibit 679 is a letter from Reed to Collings, dated January 20, 1904, and is as follows:

> We have just wired you the Red "C" Oil Company has a representative in Union, S. C., trying to make up an order for a carload of oil at 15 cents per gallon in barrels, 2% cash discount, also agreeing to allow the purchaser $1.00 for the empty barrels f. o. b. their railroad station. This would make their oil cost them 13 cents bulk, whereas our tank-wagon price on fireproof is 14½ cents, or a difference of 1½ cents per gallon, less their loss by leakage. This information comes through our lubricating representative, Mr. Adams, who states if the

> Red "C" Oil representative goes over his usual route he will visit Greenville, Pelzer, Laurens, Clinton, Anderson, Honea Path, Seneca, Walhalla, and Westminster.
>
> We are now trying to locate our Mr. Bohler, our refined-oil salesman, with a view of having him locate the Red "C" oil man and remain with him until he leaves our territory. We will certainly do all we can to prevent Mr. Metzel, of the Red "C" Oil Company, landing any orders for carload lots in this territory.

Mr. Collings' reply to the telegram referred to in the letter just quoted is Petitioner's Exhibit 680. This is a letter dated Cincinnati, January 21, 1904, and states that after receiving Mr. Reed's telegram—

> I immediately wired you to lower all of your South Carolina points ½ c. per gallon on refined oil; and I presume you will have a refined oil salesman on the ground to follow this Red "C" man around and prevent his making up any more carloads.
>
> * * * * * * *
>
> Since I wired you last night I have received your letter of the 20th instant, and note you stopped the car at Union by agreeing to allow the Union cotton mills ½ c. off your open tank-wagon price. This is all right.

This letter shows plainly the system of following up the competitor and trying to break up his carload shipments, and making special cut prices to particular concerns for that purpose.

On January 22, Reed wrote to Collings again, in part as follows (Petitioner's Exhibit 681):

> I have all of the agents in South Carolina on the alert and they are watching for this gentleman [referring to the salesman of the Red "C"]. Should he again visit any point in our territory they are to wire us at once, and I am keeping in close touch with our refined-oil man so I can advise him promptly to locate the Red "C" Oil man and follow him until he leaves our territory, and by all means prevent him from securing orders for carload lots of refined oil.

It seems from this letter that Reed did not act on the authority Collings had given him to reduce the market price throughout South Carolina one-half cent per gallon, but held off doing so awaiting instructions. Collings wrote to Reed on this point the next day (Petitioner's Exhibit 682) instructing him that if he still found that the Red "C" man was

selling oil at 15 cents he should put in effect the general reduction of one-half cent per gallon, and added:

> While we do not want to sacrifice margins unnecessarily, we are in a different position than we were three months ago, and do not want to lose a gallon of your trade on account of price.

Among other places where the Red "C" salesman sold oil on this trip was Pelzer, S. C. Petitioner's Exhibit 686 is a letter from Reed to McGee, the Standard's agent at Pelzer, dated January 25, 1904, in which Reed complains because McGee had not notified him by telegram that the Red "C" man was in Pelzer on Saturday, and says that had he received such notice he would have had his refined-oil salesman in Pelzer on Monday morning. He directs McGee, if necessary to break up this carload order, to reduce his price one-half cent per gallon at Pelzer, and says among other things:

> I feel reasonably sure if you will throw this on personal grounds and interview the merchants as you should, you will be successful in having a sufficient number of them to cancel their orders so it will be impossible for the Red "C" representatives to ship in the car.

The following day Reed wrote again to McGee (Petitioner's Exhibit 687), having meanwhile received a letter from McGee giving the names of the merchants who had ordered the carload of oil. It may be noted that this letter indicates that the price made by the Red "C" Oil Company was not really lower than the Standard's price at that time, in view of the grade of oil and of the disadvantage of handling oil in barrels. Reed says:

> As I figure the total proposition, the oil will cost the merchants 1 cent per gallon less than they are now paying us for our Fireproof, and they will have to stand the loss by leakage, etc., which will amount to more than 4 gallons per barrel, that is, by the time they have used up their entire purchase; therefore, they will not be securing their oil for less than they are now paying us; and, besides, they will get a lower grade, what we would call Diamond Headlight, which is always worth 1 to 1½ cents per gallon less than our Fireproof oil. It is certainly unfortunate we could not hold the trade in Pelzer, and I have every reason to believe that now, if you will throw this matter on personal grounds, explaining to

the merchants that your position with the company depended entirely upon your holding the trade in Pelzer, calling their attention to your affliction, I certainly believe they would become more patriotic and perhaps cancel their orders with the Red "C" Oil Company. But one of the most important points you overlooked in your report—you failed to give me the number of barrels purchased by each customer. No doubt there is some one merchant who has bought 15 or 20 barrels out of this car, and if we are successful in getting him to cancel his order with the Red "C" by wire, we paying for the message, it would mean it would break up this carload shipment, and in consideration of said merchant canceling his order we would agree to deliver him the same quantity of oil that he bought in barrels from our tank-wagon. In other words, our present market price is 14½ cents in Pelzer. If the merchant who bought the largest portion of this carload of oil could break up the car, we would sell him the same quantity at 1 cent per gallon below our regular market. This is rather a delicate question to handle, and it certainly would not be wise to let more than one man in on the scheme, and you should certainly know some of them well enough to line them up on this question. As stated in the first part of this letter, I think you can have that car canceled on personal grounds, if you give the merchants the right kind of talk, without making any concessions in price. Make up your mind you are going to do it, and I am sure the results will work out satisfactorily to you and the company.

It is certainly a striking thing that the great Standard Oil Company, with its millions of capital and its enormous profits, should think it necessary to have its agent appeal to the trade to buy oil from him on account of personal afflictions and for "patriotic" reasons. The letter is also significant in its suggestion that in order to break up the carload shipment some particular merchant should be selected to whom oil should be sold at a cut price.

Notwithstanding McGee's efforts, the Red "C" sold its carload of oil at Pelzer. To show how severely the Standard Oil Company held its agents to the duty of destroying competition, we quote the following from a letter which Mr. Reed wrote to McGee on January 27, 1904 (Petitioner's Exhibit 691):

I will have to confess the way you have handled this matter is not at all satisfactory to me, and I certainly

hope you will be able to have some one cancel their order to break up this carload arrangement. I regret to be compelled to say to you that if another car of Red "C" oil comes into your territory and is not reported or looked after as I think it should be, especially when I advise you in advance to be on the lookout for their representative, it will be equivalent to your resignation.

On January 27, 1904, Reed wrote to Collings (Petitioner's Exhibit 690), reporting his inability to break up the sale at Pelzer, and also discussing the situation at other points, in part, as follows:

> The Red "C" man is again in our territory, and has been since last Saturday afternoon. Mr. Bohler located him at Greenville and they have visited Seneca and Anderson and other points together. I have a wire from Mr. Bohler, who is in Greenville with the competitor, this afternoon, stating that he has not been successful in securing any more orders. In order to hold the trade in Anderson, Mr. Bohler followed my instructions and reduced our tank-wagon price in Anderson proper ½ cent per gallon.

Collings approved this procedure at Anderson in a letter which he wrote to Reed on January 29, 1904 (Petitioner's Exhibit 692), in which he said:

> I note that in order to take no chances of a car being made up at Anderson your salesman reduced the price at that point ½ c. This is all right; as I authorized you to make a general reduction if necessary.

Collings, being asked about this on the witness stand in the present case, testified (vol. 12, p. 972):

> Q. So you cut the price at every place where you thought they would be likely to go? A. Where we knew they would go; where they had gone before and performed.

Petitioner's Exhibit 702 is also significant, as showing the methods used to break up these carload shipments. It is a letter from Collings to Reed as follows:

> I am in receipt of your letters of the 24th instant, and regret to note that in addition to the car the Red "C" Oil Company sold at Greenville, and which has just arrived, a car has also arrived at Laurens. I note that 40 barrels of the car that was shipped to Greenville was taken by Phillips, Majors Company and Mills Mfg. Company, each firm taking 20 barrels. Who are these concerns

and how will they dispose of this oil? Do they retail the oil, and have they been buying regularly from your tank wagon? If so, you should have a pretty good idea as to how long these 20 barrels will last them. If they are jobbing the oil, where do you figure they can sell it? Is there any reason why we could not make some special arrangement with one or the other of these concerns so that we would be safe against their going into any future carload orders?

In the Laurens car I note one concern, Fuller & Darlington, took 20 barrels. Please give me the same information in regard to this concern as asked for concerning the two at Greenville. It seems to me, the key to the situation is to tie up these parties. However, I assume now that the consumption is falling off and as the season is coming on when the chances of handling oil in barrels is great, there is little likelihood of their experimenting with another carload order; but we should not have lost sight of these concerns and have been in touch with them at the outset of the season and have lined them up so that we would not have been caught with these two carloads.

Collings when testifying stated that the merchants with whom he suggested making these special arrangements must have been in the jobbing business; that merchants who handled as much as 20 barrels without risk of leakage must necessarily be partly jobbers. The letter itself which we have quoted shows that he did not know whether they were jobbers or not, but was inquiring about it, and without waiting to find out he suggests that special arrangements be made with them.

Reed wrote to Collings on March 1, 1904 (Petitioner's Exhibit 705), giving him the names of the different concerns who had bought the Red "C" oil at both Laurens and Greenville. The letter concludes:

> We will watch all of the concerns mentioned in this letter and give you all the information we are able to gather. I have arranged to keep a memorandum of all parties who buy from the Red "C" Oil Co., but I do not believe they will make an effort to dispose of any more oil in carload lots until next fall, and between now and that time I will figure out the parties it might be advisable to make special allowances to and submit for your approval.

Petitioner's Exhibit 689 is another letter relating to a sale of independent oil, although it does not appear whether the oil originated with the Red "C" Oil Company or not. It is from Reed to Driver, the Standard's agent at Roanoke, Ala., and dated January 25, 1904. The letter relates to a carload of "outside" oil which the Roanoke Grocery Company had bought, and suggests that it might be advisable to get some retail dealer or dealers to make a specially low retail price to attack this concern. The letter is in part as follows:

> Upon receipt of your letter of a few days ago I reported the receipt of the carload of oil to our general office, and I am in receipt of a letter from Mr. Collings, and he approves of the reduction I instructed you to make in last Saturday's mail, and certainly hope you will be able to retain your trade and cause the Roanoke Grocery Company to sustain a loss by leakage.
>
> * * * * *
>
> Now, if you are unable to hold your trade at that price and the grocery company are getting any percentage to speak of, it looks as though it would be advisable for us to make still further reduction, provided we can get two or more retailers to establish a price of 15 cents per gallon. In your opinion how much profit would two or more be satisfied with to make a special run on oil? I believe another 1-cent reduction would bring about the desired results, as that would enable them to make a profit of 1½ cents per gallon when sold at 15 cents.

There are numerous other letters in this series (which comprises Petitioner's Exhibits 679 to 710), all of which go to show the strenuous efforts which the Standard made to break up the Red "C" Company's business in this territory.

One of the most significant features of this evidence is its demonstration of the policy of the Standard in seeking to secure the countermanding of orders after they had been given. We wish to call the attention of the court to the testimony which Collings gave on this subject, both in the present case and in a case in Tennessee. We shall later refer to this suit in Tennessee, which was brought by reason of the fact that two representatives of the Standard had induced certain merchants at Gallatin, Tenn., to cancel orders for oil, thereby breaking up a carload shipment into that town by the Evansville Oil Company of Evansville, Ind.

In that case Collings testified, as he admitted in the present case (Vol. 12, p. 956), as follows:

> Q. You say that your company does not do this kind of business, about revoking orders?—A. It does not. I never heard of such a case until this thing came up.
>
> Q. Your company does not do anything to crush out competition?—A. It does not do anything in that way. There are a great many ways of crushing. Some crush out themselves.

Collings seeks to explain this testimony by saying that he meant that he never knew of a case where the Standard got orders countermanded by giving away oil, which was the particular method employed in that instance. He was asked further on this same subject by counsel for the Government in the present case (Vol. 12. p. 956):

> Q. You don't recall any case where your agents have gone around and got their competitor's orders countermanded?—A. No, I don't recall any cases.
>
> Q. Now, didn't you go further and say that you did not permit your people to secure the countermanding of orders?—A. We do not when we know it.

It is difficult to see what Collings meant by this testimony in view of the evidence which had already been introduced showing the attempts of the Standard to secure the countermanding of orders of the Red "C" Oil Company. Being asked about these attempts, Collings tried to justify them on the ground that the Red "C" pursued a policy of selling barreled oil in carloads instead of establishing tank stations as the Standard had done. It appears clearly from the evidence that in a large part of the territory of the Standard of Kentucky the only independent business was carload business in barreled oil, and in trying to get the merchants to countermand orders for such shipments a large part of the business of independent concerns would be attacked. This attempted defense of the attacks made upon the Red "C" Oil Company amounts practically to a claim that the oil business of the South belongs to the Standard. Collings boasted of how the Standard had established tank-wagon delivery and conveniences for furnishing the trade, and how it delivered oil the whole year round, and claimed that the independent concerns that sold in barrels were trying to break

up the legitimate business of the Standard. He said (Vol. 12, p. 972):

> A bushwhacking concern like the Red C shoots a man out only at limited seasons, selling oil in barrels, that leaks out, and cutting our price from 1 to 1½ cents, selling a cheap grade of oil that is not as good as ours, but representing it as being much better, and talking, of course, against trusts and monopolies and every other thing of that sort, hocus-pocusing the trade to make it buy a carload of oil. Now, we weren't going to let them take away our business on any such terms or conditions.

Again, he said (p. 971):

> In this South Carolina field it was a little different from anything else, as I have just told you. They skirmish around through there, bushwhack around on a carload basis in a way that we are not troubled with anywhere else.
>
> Q. You were not troubled with that anywhere else?—A. Not on the carload basis. Our competitors fight us with tank wagons, but some of these fellows would go in for it in carloads and barrels.

He said also (pp. 969–70):

> This is the lifeblood of your business. If those fellows can go over into South Carolina and unload five or ten carloads of oil on you, that puts you out of business in that territory from six weeks to three months, according to the consumption.

Here is the real explanation. This shipping in carload lots (and getting carload rates) into the southern territory was hitting at the lifeblood of the Standard's monopoly. If the Standard could keep the independents from selling in carloads and force them to confine their business to less than carload shipments, the difference in freight rates would be enough to insure the Standard's monopoly. Collings's idea appears to be that, in order to compete fairly, the independents ought to establish tank stations and sell from tank wagons like the Standard. The independents can not afford to establish tank stations everywhere with the limited volume of business which they have. Moreover, we have already shown, and shall show further in other cases, that where the independents do start tank stations the Standard cuts the prices so severely that they are often driven

out of business. The only way they can get trade in many cases is by taking orders enough to make up carload shipments. Mr. Collings's idea appears to be that the oil trade is the Standard's private preserve and that anybody that tries legitimately to get any part of it away is a "bushwhacker."

PRICE CUTTING AGAINST COOPER BROTHERS, WINCHESTER, VA.

L. F. Cooper testified that Cooper Brothers are a wholesale grocery firm, of Winchester, Va., who also handle oil. Formerly Cooper Brothers bought oil from the Standard, but about 1895 they commenced buying from independent dealers because of the inferior grade of oil which the Standard furnished, and immediately thereafter the Standard cut the price below what the Coopers could sell for at a profit; that the shipments of Cooper Brothers were followed up by the Standard's agents, who would go to the consignee (if possible before the goods arrived, and if not, very soon afterwards) and offer a price less than the regular price, and at times would give away oil to induce customers to stop buying from Cooper Brothers. (Vol. 5, pp. 2392–96.)

Cooper stated also (vol. 5, pp. 2399–2400) that the Standard tried to prevent Cooper Brothers from building a tank station at Winchester, by getting an ordinance passed by the city council forbidding the building of a tank station within 150 feet of any other building; that during the night when the ordinance was passed the Standard staked out ground and had materials delivered for a small building within 150 feet of an uncompleted tank station which the Coopers were erecting, and the next morning served notice on the Coopers not to erect the tank station within the 150 feet of the Standard's proposed building; but that Cooper Brothers succeeded in having the ordinance amended or repealed so that they could complete their tanks.

We shall later show how the business of Cooper Brothers was attacked by the Standard through the bogus independent Southern Oil Company. (See p. 535, *post.*)

PRICE CUTTING AT AUGUSTA, GA., AND VICINITY.

H. C. Boardman testified that he was in the employ of the Standard Oil Company at Augusta, Ga., for many years, beginning about 1886 and up to about 1904; that whenever

competition appeared in that territory the Standard cut prices to eliminate it; that the Standard maintained a system of reports of competitive shipments and of watching for drummers of independent concerns who came in there; that several small competitors and some large concerns started competing with the Standard at Augusta and vicinity, and that the Standard figured what the oil would cost the competitor and how much it would cost him to market it, and then would put the price slightly below that price and thus secure the trade. (Vol. 5, pp. 2163–5.)

The first competitor who started business at Augusta after the Standard took over the Chess-Carley Company was J. T. Thornhill, but the Standard cut the price, his oil leaked out of the barrels, and he finally abandoned business. The next competitor was Blodgett, Moore & Co., who opened a branch about 1888. The Standard cut the price and they remained in business only about two years, selling out to the Standard, when the price was immediately raised. (Boardman, vol. 5, p. 2166.) Boardman also testified (p. 2167) that the Crew-Levick Company started in business at Augusta about ten years ago, but that he could not tell within two or three years of the exact date; that as soon as it entered the field the Standard lowered the price, and Crew-Levick withdrew after about a year.

C. T. Collings, vice-president of the Standard Oil Company of Kentucky, was asked by the defendants' counsel whether it was a fact that, as testified by Boardman, the Standard cut the price when Crew-Levick Company entered Augusta in 1898, and he stated that the price in Augusta January 1, 1898, was 8 cents, and it advanced in July to 8.5 cents, where it remained the rest of the year, and that he had no prices back of 1898. (Vol. 12, p. 910.) There was no reason why counsel should have taken the year 1898 alone as a basis for questioning Collings, as Boardman was not certain within two or three years of the time Crew-Levick Company entered business, so that this is no reply to Boardman's testimony.

On May 1, 1904, Boardman left the Standard and went into business for himself at Augusta. He stated that even before he got started the Standard commenced cutting the price, and that by successive cuts the price was reduced within ninety days from 14.5 cents to 9 cents a gallon. (Vol.

5, p. 2169.) He said that he followed the price cuts down to 11 cents; that the Standard then cut to 10 cents, and put in another grade of oil which was sold at 9 cents, while Mr. Boardman continued to sell his oil at 11 cents. It is evidently this lower grade of oil which the Standard sold at 9 cents to which Boardman referred in his first statement regarding the extent of the cut. About one-third of the trade stood by Boardman, because they appreciated the fact, he said, that but for his competition they would be paying a much higher price for their oil. (Vol. 5, p. 2171–72.)

Boardman also testified (p. 2170) that Nolls, who succeeded him as manager for the Standard at Augusta, told him that the Standard would spend, if necessary, $50,000 to $75,000 to put him out of business; told Boardman he would lose everything he had, and offered to take Boardman's tanks off his hands and pay him a salary for a short time. Boardman said Nolls also circulated this report, as to the Standard's attitude, about the town for the effect it would have upon him.

Collings, although questioned regarding prices at Augusta, was not asked regarding the reduction in prices following Boardman's entry into the business.

Boardman had also testified (vol. 5, p. 2175) that in 1907, while he was competing with the Standard at Augusta, the Standard was selling oil in that city at 9 cents, while in other places in the Augusta district it was selling as high as 16 cents, and that it cost only 1 cent to 1.5 cents a gallon more to market oil in these outside towns. (Vol. 5, p. 2175–6.) Collings was called upon to reply to this testimony, and said he did not think the Standard ever sold oil at 9 cents in Augusta, and that the lowest price for the regular oil (water white) they sold there in 1907 was 10 cents. (Vol. 12, pp. 912–13.) Boardman did not say that the price of water white oil was 9 cents. The Standard's own records, introduced in evidence in this case (Petitioner's Exhibit 327), show that in September, 1907, its tank-wagon price for water white oil at Augusta was 10 cents, but its price for prime white oil was 9 cents. (See vol. 8, p. 711.) It also appears that the margin of profit to the Standard at that time on both grades of oil was only 0.35 of a cent per

gallon, very far below the Standard's usual margin of profit in marketing.

Collings also sought to contradict Boardman's testimony regarding the higher prices in outside towns, and for that purpose named the prices at Thompson and Waynesboro, the two tank stations nearest Augusta, where he says the Standard sold at 11.5 cents. (Vol. 12, pp. 912–13.) To quote thus the price in only two towns is no sufficient answer. Boardman did not say that the price of 16 cents was maintained in these two towns, or in any tank-wagon town; the Standard's prices are often far higher in outlying small towns than at the tank stations. Boardman's statement that the Standard did discriminate sharply in prices in Georgia, selling at Augusta for prices relatively far lower than elsewhere, is abundantly corroborated by the Standard's own records of prices and margins of profit (Petitioner's Exhibit 327). This shows the prices at each tank station in Georgia as of date September 24, 1907, and the margin of profit. We quote here the prices at a few selected towns in Georgia for water white oil (Fireproof brand) from tank wagon, together with the margins, which are the true measure of the discrimination in price:

[Cents per gallon.]

Name of town.	Price.	Margin.	Name of town.	Price.	Margin.
Augusta	**10.00**	**0.35**	Fort Gaines	13.50	2.49
Adel	13.50	2.44	Helena	13.00	2.52
Arlington	13.50	2.00	Manassas	13.00	2.95
Bainbridge	13.00	2.26	Moultrie	13.50	2.76
Bowersville	14.00	2.22	Pelham	13.50	2.38
Cedartown	12.50	2.94	Rochelle	13.50	2.74
Cordele	13.00	2.26	Statesboro	13.00	2.90
Dalton	12.00	2.44	Trion Factory	13.50	2.61
Dawson	13.00	2.26	Vidalia	13.50	3.34
Eastman	13.00	2.46	Waverly Hall	13.50	3.04
Eatonton	13.50	2.36			

It will be seen that in these stations in Georgia the price charged by the Standard was from 2 to 4 cents higher than at Augusta, and that the margin of profit was in many cases 2 cents or more above that at Augusta, and from six to nine times as high as that at Augusta.

Boardman stated (vol. 5, p. 2175) that about August, 1906, he opened a station at Denmark, S. C., where the Standard was selling oil at 15 cents; that the Standard commenced to lower the price until it reached 11.5 cents, and that he reduced his price only to 12 cents. This is uncontradicted.

PRICE CUTTING AT ATLANTA, GA.

For some years prior to 1898 the Commercial Oil Company and the People's Oil Company were independent concerns doing business at Atlanta in competition with the Standard. E. N. Wootten, who was employed by the Commercial Oil Company, testified (vol. 5, pp. 2096–99) that the Standard cut prices severely against these companies, so that there was practically no profit in the refined-oil business, and the only way the Commercial could make any money was in lubricating oils. He said that in 1897 the Standard had lowered the price of refined oil to 6.5 cents; that the business of the Commercial was followed up closely by Standard employees, and wherever it obtained a customer special efforts were made to get that customer for the Standard; that in 1898 the Commercial and the People's companies were compelled to abandon the fight, and sold out to the Standard, and that the price of oil advanced from 6.5 cents on January 1, 1898, to 13 cents in 1899.

Collings sought to contradict this testimony of Wootten (vol. 12, pp. 897–901), but his own testimony is not clear, and on cross-examination he admitted that his original statements were in part erroneous. It appears from his testimony that he did not have with him a record of the prices in 1897 (he had such records for 1895 and 1896), but he said that the price of refined oil at Atlanta in that year was 8 cents and never went to 6.5 cents that he remembered. Doubtless he was speaking of the price of water white oil, as he did for instance in his testimony about prices at Augusta. The Standard often sells a lower grade of oil at 1 cent or even

more below the price of water white. He stated further that the Standard never cut the price as against the Commercial as far as he could recall, and certainly not for the purpose of driving the Commercial out of business, and that if any cuts were initiated they were initiated "Most likely by the Commercial Oil Company; that was the only way they could get business." With reference to the advance in the price after the acquisition of the Commercial and the People's companies by the Standard, Collings testified (vol. 12, p. 900), on direct examination, that the highest price at Atlanta during 1898 was 9.5 cents. This would have been no reply to Wootten's statement that the price reached 13 cents in 1899, but, as a matter of fact, Collings was mistaken even regarding 1898. He was shown on cross-examination tank-wagon tickets from Atlanta, which he admitted to be the Standard's tickets, showing a price of 11 cents in October, 1898. Here was an admitted advance from 8 cents at the beginning of 1898 to 11 cents in October. (Vol. 12, pp. 1053–5.) Collings had sought to explain the alleged advance to 9.5 cents by a somewhat similar advance in the price of crude oil (vol. 12, pp. 900–1), but if this explanation was correct, it certainly could not apply to an advance to 11 cents.

Wootten also testified (vol. 5, pp. 2160–2) that there was no competition in Atlanta from 1898 until 1901, when the Lake Carriers Oil Company of Cleveland started into business there; that the Standard thereupon reduced the price from approximately 13 cents to 9 cents, and that the Lake Carriers sold out its local business at Atlanta to the Standard in the winter of 1901, immediately after which the price of oil was advanced and within six months reached 15 cents a gallon. Collings testified on this point (vol. 12, p. 902) that the Lake Carriers Oil Company never did business in Atlanta. Wootten went into details concerning the business of the Lake Carriers Oil Company; he was on the ground, whereas Collings was at Cincinnati. It was impossible that Wootten should have been mistaken, while Collings might easily have been.

Collings also denied that the price of oil was reduced at Atlanta in 1901 from 13 to 9 cents, but he admitted that it varied from 11 cents to as low as 8 cents in that year, which

is practically as great a reduction as Wootten had stated. A witness testifying from mere recollection may readily misstate prices somewhat, while still giving substantially the correct movement; Wootten had qualified his statement as approximate. Collings also denied that the price in 1902 went up to 15 cents, as Wootten had stated, but admitted that it went up from 8 cents in 1901 to 11.5 cents in 1902. (Vol. 12, p. 903.) As a matter of fact, Collings was mistaken as to the extent of the advance in 1902, for the records of the Standard Oil Company at 26 Broadway, New York, which were put in evidence by the Government (Petitioner's Exhibit 395, vol. 8, p. 944), show that the price of water white oil at Atlanta in 1902 reached 13 cents per gallon on December 1st, or 5 cents more than the price in 1901. Moreover, the same exhibit shows that early in 1903 the price reached 14 cents per gallon. While Wootten may not have known the price exactly, he evidently knew substantially the movement which took place.

Collings also said (vol. 12, p. 903) that the advance from 10 to 11.5 cents in 1902 at Atlanta corresponded to a general advance throughout the entire territory of the Standard Oil Company of Kentucky. The record of prices from the Standard's office in evidence (Petitioner's Exhibit 395) shows that while the price at Atlanta went up from 10 cents in January to 13 cents in December, 1902, the price at Birmingham, Ala., went up from 11.5 cents to 13 cents, and the price at Nashville, Tenn., from 11 cents to 12.5 cents; in other words, there was just twice as much advance at Atlanta as at these other two towns. At Memphis, moreover, the price was the same at the end of 1902 as at the beginning, and at New Orleans it was lower at the end than at the beginning; all of these towns being in the marketing territory of the Standard of Kentucky. The margin of profit at Atlanta went up from 0.87 cent in January, 1902, to 1.93 cents in December, 1902, and to 2.49 cents in January, 1903. Collings should have consulted the figures already in evidence from the defendants' own records before he attempted to talk from recollection and partial memoranda regarding prices in this territory. In practically every case where he sought to give specific prices from recollection he was shown to be in error.

PRICE CUTTING AT BIRMINGHAM, ALA., AND VICINITY.

G. T. Wofford, who was employed as chief clerk and assistant to the Standard's manager for the Birmingham territory from 1898 to 1902, testified (vol. 5, pp. 2154–5) that in the territory under the jurisdiction of the Birmingham office, which covers most or all of Alabama (see Petitioner's Exhibit 327), there was a system by which the Standard would follow up the traveling men of independent companies on their trips through the South, notifying its salesmen and agents in advance when such a traveling man would pass from one of the Standard's divisions to another, and that the instructions were to cut the prices in every case where an independent salesman succeeded in getting an order, and that this practice was general. This testimony refers particularly to the following up of salesmen of independent concerns who were seeking orders for barreled oil in carloads, and was similar to the practice in South Carolina which we have described at length.

E. L. Pauley, who was the special agent of the Standard at Birmingham after Wofford left its employment, said that the salesmen of the Standard did not "particularly follow" the competitors' salesmen; that they had no authority to cut prices, but had instructions to secure all the business they possibly could at prices given them from his office, and that he never sent out a traveling salesman from Birmingham to follow up the salesman or agent of a competitor. (Vol. 12, p. 845.) This testimony relates to a different period of time from Wofford's testimony, and, moreover, does not specifically deny the existence of the practice which Wofford testified to. It doubtless was true that the Standard's salesmen had no authority to cut prices themselves, but we have seen that in South Carolina cuts were authorized by their superior officers, and doubtless the same thing happened in the Birmingham territory.

Wofford testified (vol. 5, pp. 2156–7) that about the end of 1902 he, with others, started the Southeastern Oil Company (independent) in Birmingham; that the Standard's tank-wagon price when they started was 14 cents; that after two or three months it was cut to 13 and then from time to time down to 11; that the Southeastern followed the price to

12 cents and then stopped; that this company lost money, and finally sold out to the Standard about June, 1904.

Pauley, special agent of the Standard at Birmingham, testified that the price was not cut from 14 to 11 cents, but says that the Standard made a reduction in April, 1903, from 14 to 13 cents, which was general throughout his territory. (Vol. 12, p. 847.) We do not understand why Pauley should have referred only to the reduction made in April. Wofford had not given any particular limit to the period in which the price was cut. Petitioner's Exhibit 395 (vol. 8, p. 947), taken from the Standard's own records, shows that immediately after the cut to 13 cents in Birmingham there was another cut to 12 cents, making a total reduction of 2 cents within two months, and this reduction exceeded the reduction at other points in the territory of the Standard Oil Company of Kentucky. At Atlanta, Nashville, Memphis, and New Orleans the reduction was only 1 cent. The Standard's profit on sales at Birmingham fell from 3.36 cents per gallon in the early part of 1903 to 1.44 cents in October, 1903. These are the prices of water white oil, and it is quite probable that the Standard sold a lower grade of oil at 11 cents at the same time it was charging 12 cents for water white. Boardman testified to the fact that the Standard put in a lower grade of oil at Augusta, Ga., to compete with the independent oil, and the same thing may have been done at Birmingham, so that Mr. Wofford undoubtedly is entirely correct in his testimony.

Wofford also stated (vol. 5, p. 2157) that some time after the Southeastern Oil Company was bought up by the Standard he started the G. T. Wofford Oil Company and that in 1905 the Standard cut the price from 11 to 10.5, and cut it finally to 9.5 cents. He did not say that this price of 9.5 cents was reached during the year 1905, or when it was reached. When Pauley was called to contradict this testimony defendant's counsel said that Wofford had testified that the Standard cut the tank-wagon price of oil in 1905 from 11 to 9.5 cents, which was not what Wofford had said. Pauley stated (vol. 12, p. 848) that the price was reduced from 13 cents on January 1, 1905, to 12.5 cents January 25, and to 11.5 cents February 9, and remained at that point

throughout 1905, and that these reductions were due to the usual practice of making lower prices in the summer, and to a reduction in the price of crude oil. These prices again are prices of water white oil. There is no evidence that a lower grade was not sold at lower prices. The Standard's own records show that the price of water white oil was further reduced from 11.5 cents to 10.5 cents in 1906, and that in September, 1907, which was prior to Wofford's testimony, the price was 9 cents and 9.5 cents for water white oil, apparently different prices being charged to different dealers. This shows altogether a greater reduction from 1905 to 1907 than Wofford had testified to, and while he may have been mistaken as to the exact figures, or may have referred to the price of a lower grade of oil, his testimony is by no means contradicted.

That the reduction in the price at Birmingham was not wholly due to general conditions appears from the margins of profit. During the months from January to September, 1905, the profit at Birmingham ranged from 2.37 to 3.37 cents per gallon; in 1906 it fell from 1.53 cents to .41 cent; and in September, 1907, the lower price reported resulted in a profit of only .06 of a cent, and the higher price in a profit of but .56 of a cent. (Petitioner's Exhibit 395, vol. 8, p. 947; Petitioner's Exhibit 327, vol. 8, p. 734.)

Wofford also testified (vol. 5, p. 2158) that in the territory surrounding Birmingham the prices of the Standard are not uniform, being low where there is competition and high where there is no competition, and that while the price at Birmingham was 9.5 cents it was 14 cents at Bessemer, a town 14 miles away.

Collings made a general statement (vol. 12, pp. 909–10) that the difference between prices at Birmingham and at the surrounding towns was due to differences in freight and cost of marketing; and Pauley testified (vol. 12, pp. 850–1) that the prices in towns around Birmingham not having tank stations were higher on account of the less than carload freight rates on oil shipped from Birmingham, and that the difference in price at tank-wagon stations outside of Birmingham as compared with Birmingham, was due to the higher cost of marketing. Pauley did not give any figures

to support this general statement. We have not the prices at towns where there are no tank stations, but we have the figures for different tank stations in the Birmingham territory from the Standard's records, covering a date not very different from that of Wofford's testimony. (Petitioner's Exhibit 327, vol. 8, p. 734, et seq.) These figures show both the prices and the margins of profit, after allowing for differences in freight rates and in cost of marketing, and they show a marked discrimination as between Birmingham and outlying tank-station towns. We quote a few of the prices and profits in the Birmingham territory for the date August 31, 1907. The prices are all for Fireproof brand of water white oil from tank wagons:

[Cents per gallon.]

	Prices.	Margins.		Prices.	Margins.
Birmingham	9	0.06	Gadsden	12	2.35
	9.5	0.56	Jasper	12	2.16
Anniston	12.5	2.85	Lafayette	13	2.50
Bessemer	11.5	1.85	Roanoke	13	2.50
Dothan	13	2.11	Thomasville	12.5	2.27
Eufaula	12	2.35			

Pauley testified to alleged cuts in price by the Wofford Oil Company. In one case his statement was merely that, in bidding for a large contract for lubricating oils amounting to about $5,000 a month, the Wofford Company underbid the Standard. This is but ordinary business. As to the only other case he mentioned, an alleged cut on refined oil, he knew nothing except what somebody had told him. (Vol. 12, p. 853.)

Pauley also claimed (vol. 12, pp. 853–5, 857, 871–4) that the Gulf Refining Company had frequently and persistently cut the Standard's price in the Birmingham territory. The Gulf Refining Company manufactures oil from Texas crude, and Pauley admitted that he did not know but that it was a cheaper grade, which would account for a difference in price. It may be that the Gulf Refining Company, which is a new concern having a very large plant in Texas, has entered the

southern territory, where the Standard's prices have been excessively high, and offered oil at reasonable prices, but that is no justification of the policy of the Standard in cutting prices so severely as to destroy the business of competitors, as we have shown has frequently been done.

PRICE CUTTING AT POINTS IN OHIO.

C. J. Castle, who until 1900 was employed by the Standard Oil Company of Ohio, testified particularly regarding the practice of price cutting by means of rebates to individual dealers which prevailed during the time of his employment. This testimony we shall consider in another connection. He also testified, however (vol. 6, pp. 3055–57), that when about 1900 he started into business for himself at Cleveland under the name of the Columbia Refining Company, handling independent oil and selling it to retail dealers, the Standard's price at Cleveland went down 2 cents a gallon within four or five months, and that the Standard on different occasions had spies out following his wagons and getting a list of his customers. He said that when the Standard had reduced the price to a point where the Columbia Refining Company could not make money he let the Standard take the trade and stopped for awhile, knowing the Standard's tactics, and afterwards when the prices went up again he would go back into the trade; that sometimes he would lose his trade for a long time. He said also that reductions in price were made by the Standard in Cleveland principally by way of rebates, such rebates being made especially to peddlers who delivered oil from wagons to consumers. Bogus independent concerns were also employed to attack Castle's business. (See pp. 580, *post*.)

The defendants called S. K. Brusman, who had been employed by Castle, and who testified (vol. 13, p. 1483) that he remembered making one or two trips with tank wagons of the Columbia Refining Company through northern Ohio outside of Cleveland; that he made one trip through from Cleveland to Akron; that he remembered selling to Quigley at Barberton, Ohio, at one-half cent under the Standard's price, and that he also gave him a rebate; that he made trips through Macedonia, Hudson, and Cuyahoga Falls, under Castle's instructions, for the purpose of demoralizing the Standard's market, and cut the price half a cent, and

that he also made some special prices by means of rebates to particular customers of the Columbia Refining Company at Cleveland, but he did not remember how frequently.

It may be true that Brusman sold oil in these towns out of Cleveland at half a cent below the Standard's price, because the Standard almost invariably had a decidedly higher price in outlying towns than in large competitive points like Cleveland. Castle had himself stated that he sometimes cut the Standard's prices. (Vol. 6, p. 3088.)

F. B. Squire, vice-president of the Standard Oil Company of Ohio (vol. 13, p. 1516), denied Castle's statement that the Standard had spotters to obtain lists of tank-wagon customers who were buying oil of competitors; he said that every tank-wagon driver had his own route; that he constantly canvassed the same trade and therefore knew as to each customer whether he bought from the Standard or from others. Squire was simply theorizing; his duties were of too general a character to call for knowledge of the details of the business. It has been proved too often in this case that the Standard did adopt the practice of following up its competitors to see where they delivered oil for Mr. Squire to dispose of that subject by any such argument.

THREATENED PRICE CUTTING AT LINCOLN, NEBR.

Frank Gamerl, who was in 1904 agent for the Standard Oil Company at Lincoln, Nebr., testified (vol. 6, p. 3137–8) that at that time the Lincoln Tank Line Company was peddling oil to customers at Lincoln; that it had purchased its oil from the Standard until the fall of that year, when it began to buy in part from the Marshall Oil Company, an independent concern. Gamerl called upon the owners of the Lincoln Tank Line Company and tried to induce them to buy all their oil from the Standard. Failing in doing so, he showed them a letter which he had received from Winslow, the acting manager of the Standard at Omaha, who had jurisdiction over this territory. In this letter (Petitioner's Exhibit 838) Winslow stated:

> Inasmuch as these parties have broken faith with us, and there is nothing to be expected from them, we will be compelled to protect our own interests in Lincoln. With this end in view, I wish you would kindly go over

the situation very carefully, and advise me how many peddling wagons you will need to cover the town thoroughly. * * * You understand, of course, that we must hold our business in Lincoln at all risks. After I hear from you I will decide as to prices and advise you how I want this business handled.

Gamerl testified that the Lincoln Tank Line Company believed that this letter meant they would be driven out of business, and that they immediately quit buying oil from the Marshall Oil Company. (Vol. 6, pp. 3138, 9.)

PRICE SITUATION AT ST. PAUL, MINNEAPOLIS, AND DULUTH.

W. D. Todd testified (vol. 6, pp. 3213–14) that about 1893 the Cornplanter Refining Company, which has a refinery at Warren, Pa., was doing a marketing business at St. Paul; that Jas. A. Moffett, who had charge of the marketing of oil in the Northwestern States, invited Todd to an interview at 26 Broadway, New York, in which Moffett told him that the Cornplanter was selling 30,000 barrels of oil a year in St. Paul, and that that was more than the Standard could stand for unless the Cornplanter would make an arrangement with it. Moffett said the Standard people were willing to allow the Cornplanter to market that much, provided they bought from the Standard. This Todd declined to do. Later Moffett told him that the Standard's committee had authorized him to say that, unless the Cornplanter would buy the burning oil which it marketed at St. Paul from the Standard, it was up to him (Moffett) to get the business; and still later said to him: "I might do a great deal different if it was left to me, but I haven't the authority."

This interview shows clearly the policy of the Standard in dealing with competitors. It would not permit them to increase their business beyond a certain point without attacking them. The competition of the Cornplanter and other independent concerns at St. Paul and Minneapolis undoubtedly explains the fact that very much lower prices have prevailed there than in noncompetitive points in the same general territory, as appears clearly from the price records of the defendants introduced in evidence. (Petitioner's Exhibits 391 and 395.)

The defendants, however, tried to prove that independent concerns had cut prices in St. Paul and other points in this territory. H. H. Oppel, manager of a grocery company at Duluth, testified that in 1904 that company began buying from the Cornplanter because the Cornplanter driver agreed to give 5 gallons of oil free with every 50 bought, but that he quit because he had complaints from his customers that the oil was not satisfactory. On cross-examination he said that he did not know the brand or grade of oil he was buying from the Cornplanter, or the price he paid to the Standard or to the Cornplanter, but he found it cheaper to buy of the Standard at its price than to buy of the Cornplanter. (Vol. 15, pp. 2383–5.)

P. C. Crenshaw, general manager of the sales department of the Standard of Indiana, was called by the defendants and asked to explain the fall in the Standard's price of oil at Duluth from 10 cents in April, 1904, to 9 cents in May. He said (vol. 15, p. 2386) that the Standard's manager at Duluth reported to him that a competitor at that point was making secret concessions by giving 5 gallons of oil with every 50; that he investigated and became satisfied that this was true, and accordingly reduced the price. He claimed that the further reduction in July to 8.5 cents was on account of a lowering in the cost of oil.

Both Crenshaw and Oppel were evidently testifying to the same state of affairs, and Oppel's testimony shows that the Cornplanter's oil was of a different grade, so that selling it at a lower price, which was practically done when 5 gallons were given free, was not really a cut of the Standard's price, and did not justify the Standard in reducing its price to fight the Cornplanter. Crenshaw's statement, moreover, does not show the full situation at Duluth. The prices there were reduced, as shown by the defendants' own records (Petitioner's Exhibit 395), from 12 cents, in January, 1904, to 8.5 cents in July, remaining at the latter point for nearly two years. Whereas the Standard had been making a profit of from 1.32 to 2.55 cents per gallon at Duluth in 1903, and of 1.73 cents in January and February, 1904, the reduction in price brought about a loss of .52 cent in May, 1904, and of .88 cent in the last four months of that year. Even if there had been a cut by the Cornplanter to the extent of

approximately 1 cent (which would be the effect of giving 5 gallons of oil free with 50 gallons) this would not justify a reduction in price by the Standard from 12 cents to 8.5 cents. At the same time that this cut of 3.5 cents was being made at Duluth there was a reduction of only 1.5 cents at Mankato, Minn., where there was no competition. Moreover, Crenshaw referred to alleged cuts by the Cornplanter only as explaining the reduction of the Standard's price from 10 to 9 cents in April, 1904. The Standard had cut the price at Duluth sharply before April, and was presumably the first to make any cut; the price was reduced from 12 cents in February to 10.5 cents in March and to 10 cents on the 1st of April.

Crenshaw was also asked by the defendants to explain the fact that in January, 1902, the price at Minneapolis fell from 8 to 7.5 cents, and remained there for some time. Petitioner's Exhibit 395 shows that while the price was being reduced at Minneapolis it was advanced at Duluth one-half a cent a gallon, while it remained unchanged at Fargo, N. D. Crenshaw said that he was advised by the manager at Minneapolis that a competitor was giving secret rebates equivalent to half a cent a gallon; that after careful investigation he satisfied himself that this was true, and so cut the open price to meet the secret price of the competitor. (Vol. 15, p. 2387.) On cross-examination (p. 2393) he said that these cuts by his competitors were similar to those at Duluth in 1904. Being pressed further he could not tell what cuts were actually made, but said that he got information, both orally and in letters; when the letters were called for he said that he did not have them; that they had been destroyed, and that he could not give the contents. This is too indefinite testimony to be worthy of much consideration.

On direct-examination Crenshaw also stated (vol. 15, p. 2387) that the reductions in price at Minneapolis in May, 1903, July, 1903, and February, 1905, as shown in Petitioner's Exhibit 395, were due to reductions in the cost of the oil. These statements by no means fully explain the situation at Minneapolis. Petitioner's Exhibits 395 and 635 show that at nearly all times from 1902 to 1906 the Standard's price at Minneapolis was far lower than at other towns in the same territory, such as La Crosse, Wis., Fargo, N. D., Man-

kato, Minn., and, for part of the time, Duluth. The prices at Fargo, for example, had been for most of the time from 4 to 6 cents higher than at Minneapolis. Throughout most of 1902 and 1903 the Standard was selling at a loss in Minneapolis, while at La Crosse, Fargo, and Mankato the profit during most of that time was from about 1.25 to nearly 4 cents per gallon, and during the years 1904 to 1906 also the profit at Minneapolis was much lower at nearly all times than at these other towns.

Crenshaw gave no explanation of the cuts in price at Minneapolis during 1904, in which year the price went down from 11.5 cents to 9.5 cents, reducing the profit per gallon about one-half cent. The true explanation of the low prices in this city is found in the large amount of competition in the Minneapolis territory, where independent concerns did from 35 to 42 per cent of the business during these years, while at Fargo and Mankato there was practically no competition from 1902 to 1904. (See Petitioner's Exhibit 635.)

Crenshaw's somewhat extended cross-examination resulted in much confusion and contradiction. He lived at Chicago, and all he knew was what somebody wrote or told him. The fact is apparent that the reason the Standard maintained such low prices at Minneapolis and St. Paul, and during part of the time at Duluth, was to drive the Cornplanter and other independents out of business, just as Moffett had threatened Todd.

PRICE CUTTING IN WATERS-PIERCE TERRITORY AND IN MISSOURI AND KANSAS GENERALLY.

H. J. Cohn, who was a salesman for the Waters-Pierce Oil Company in various parts of its territory for many years prior to 1903, testified (vol. 2, pp. 907–8) that the prices charged by that company varied in different parts of its territory, being high where there was no competition and low where competition was active, the variation being from 1 to 3 cents per gallon greater than the difference in freight rates; that whenever an independent sold oil at a certain point for less than the Waters-Pierce Oil Company, or in fact shipped any oil at all to any point, the Waters-Pierce price was immediately reduced "far enough to get the business."

L. C. Lohman, a merchant of Jefferson City, Mo., testified that whenever a carload of independent oil was shipped there the Waters-Pierce Oil Company would, several days prior to its receipt, reduce the price of oil, and this reduced price would be maintained until the carload was about sold out, when the price would be again advanced. (Vol. 2, p. 935.)

W. A. Morgan, who for about three years commencing in 1898 was employed by the Standard, part of the time as a traveling salesman and part of the time in charge of the station at Sedalia, Mo., testified that he was instructed by Mayer, his superior officer, to destroy all competition and not allow a competitor to sell a barrel of goods anywhere, and to secure the countermand of orders wherever he could; that the managers of the stations had authority to cut prices to a certain extent in order to get business from a competitor, but for greater cuts they had to get express authority from higher officers. (Vol. 3, pp. 1003–14.)

T. R. Hopkins, who was agent of the Waters-Pierce Oil Company at Pierce City, Mo., between 1888 and 1903, testified (vol. 3, pp. 1027–31) that in that locality the Waters-Pierce had the entire business, except that in two instances Scofield, Shurmer & Teagle sold oil, and in these instances their competition was suppressed by means of a rebate of half a cent a gallon given by the Waters-Pierce Company; that, whenever this independent concern sold oil in the territory around Pierce City, the Waters-Pierce would not reduce its prices to the trade generally but would give rebates to the men who had bought independent oil just sufficient to bring the price below that at which the independent had sold. He said that prices of the Waters-Pierce at Joplin, Carthage, Webb City, and Springfield were from 1.5 to 3 cents less than in his locality; that he complained of the fact to Ackert, the general manager of the Waters-Pierce Oil Company, who told him that it was none of his business and that the reason for the difference in price was because there was no competition in Hopkins's territory.

E. M. Wilhoit, who was for nine years employed by the Standard in Kansas and then went into the independent oil business at Joplin and Springfield, Mo., beginning about May, 1898, said it was his experience that an independent

dealer can market a small percentage of goods at a profit, but if he increases his business beyond a certain percentage, say 15 or 20 per cent in a given locality, the Standard or the Waters-Pierce would cut prices so low as to destroy his business or make him go broke on low prices; and that the prices of the Standard companies are determined by the extent of competition. (Vol. 3, pp. 1033, 1037.) He said that while he was agent for the Standard at Wichita, Kans., he received advices of independent shipments into his territory, and under instructions would go to the merchants buying independent oil and make them a price which would induce them to buy from the Standard, while other merchants next door who were not buying independent oil would be charged the old price; he adds that in many cases he had an unlimited price in those days to meet competition. (Vol. 3, p. 1215.)

L. J. Drake, who had general charge of this marketing territory for the Standard at the time covered by Wilhoit's testimony, said (vol. 13, p. 1073) that Wilhoit never had any instructions different from any other agent or salesman; that he never had any instructions to make any prices to get business, and had no unlimited price. This is followed up, however, by Drake's statement that Wilhoit did get his prices from the local manager at Kansas City and not from him, Drake, as general manager. It appears, therefore, that Drake had no personal knowledge of what authority Wilhoit may have received from the local manager at Kansas City.

Drake was in a much more general position and apparently was located at this time either at Omaha or Chicago Wilhoit may have had special authority to do exactly what he says he did. He does not say that he had the authority at all times to make an unlimited price, but that he had it in many instances. We have seen how in the South Carolina territory special authority to cut prices against competitors was given to local agents by telegrams and letters.

S. Lederer, who was a merchant at Dexter, Mo., testified (vol. 3, pp. 1044–46) that about 1898 the Waters-Pierce Oil Company was then practically the only concern selling oil in that town; that an independent salesman came there from St. Louis and made up a carload of oil among the merchants, selling it at a lower price than the Waters-Pierce was

charging; that the agent of the Waters-Pierce Oil Company advised him to keep out of the deal and that the Waters-Pierce Oil Company would stand by him; that the merchants who had bought this oil began retailing it at 15 cents, the previous price having been 20 cents; that Lederer then cut the retail price to 12 cents and went on down until he sold it for 5 cents, and that he paid the Waters-Pierce Oil Company for his oil about what he sold it for. This was the last shipment of competitive oil that went into Dexter. This is one of the instances, of which a considerable number were brought out in the testimony, in which the Standard interests attacked independent concerns by getting retail dealers to sell oil at absurdly low prices in competition with the oil shipped in by independent concerns. It is true that the independent concern in this case cut the price first, but that is no doubt because the price at Dexter had previously been unduly high, and because the independent concern gave the merchants there, in accordance with the usual custom of such concerns in carload shipments, the benefit of the price at central markets plus the freight charges.

PRICE SITUATION AT DENVER, COLO.

H. M. Tilford, who has charge at 26 Broadway, New York, of the marketing of oil in the Rocky Mountain and Pacific coast territories, was called by the defendants to explain the decline in prices at Denver in 1906 as shown by Petitioner's Exhibit 635. This exhibit shows that the Standard's prices of water-white oil at Denver from tank wagon from 1902 to 1905 ranged from 15 to 20 cents a gallon, there being then a profit ranging from 2.88 to 7.02 cents per gallon; and that early in 1906 the price was reduced from 15 cents to 10 cents, resulting in a loss. Tilford stated (vol. 17, p. 3499, 3500) that the price was first reduced from 15 to 13 cents, which corresponded to a general reduction throughout the territory; that it was then reduced to 12 cents at the instance of the merchants, who had lowered their retail price from 20 cents to 15 cents and needed a higher margin of profit; that later the Anti-Trust Company, an independent concern, commenced to sell oil at Denver at a cut price, and the Standard reduced its price accordingly to 10 cents. He

said the Anti-Trust Company was selling at 12 cents, giving 5 gallons free with every 50 gallons, which would make 10.9 cents per gallon. It appears therefore that the Standard put its price below that of the Anti-Trust Company, although immediately afterwards Tilford, in answer to a leading question by defendants' counsel, stated that the Standard never to his knowledge made a cut below its competitor's price.

His statement that the first cut of 2 cents, from 15 to 13 cents, was general throughout the territory is refuted by the figures from the Standard's own records. (Petitioner's Exhibit 635; see particularly p. 1657, vol. 8.) The only other towns in the Rocky Mountain territory for which price records covering this period were secured were Las Cruces, N. Mex., Santa Fe, N. Mex., and Butte, Mont. At Las Cruces there was no reduction during the year 1906; at Santa Fe there was no reduction in price between January and September, 1906; and, although there was a reduction at Butte from 22 cents in January to 20 cents in February, the price was advanced again to 22 cents in July and August, while the price at Denver remained at 10 cents.

When general reductions are made by the Standard throughout a marketing territory it is usually due, as the Standard's witnesses have explained, to a reduction in the cost of the oil, that is, in the price charged by the refining company to the marketing company. That there was no reduction in the cost of the oil sufficient to account for the reduction in the price at Denver from 15 to 13 cents is shown by the margin of profit from the Standard's own records, in Petitioner's Exhibit 635. This shows that the profit on the 15-cent price in January was 3.41 cents, and on the 12-cent price in February, 1.16 cents, which would mean that on the 13-cent price the profit would have been 2.26 cents, a reduction of 1.15 cents below the profit at the beginning of January. It is not probable that the Standard reduced its prices in corresponding amount, with such a consequent reduction in profit, in very much of the Rocky Mountain territory where, except in a few places, there was no competition All that Tilford knew about this situation, as he admitted on cross-examination (vol. 15, p. 3507), was information he had received from others.

It seems quite probable therefore that the first reduction in the price at Denver was initiated by the Standard and not by the Anti-Trust Company. Petitioner's Exhibit 635 shows further that during six months of 1906 the Standard was selling at a loss in Denver, while during the same six months it was making a profit of from 4.25 to 4.90 cents per gallon at Santa Fe, and of from 4.73 to 7.09 cents at Butte. Tilford tried to justify this striking situation by attempting to show price-cutting by a little company not before heard of in this case, while his own testimony shows that his company, the Continental, went below the price of the Anti-Trust Company. Evidently the Anti-Trust Company could not afford to continue in business at Denver very long under such conditions, while the Standard could make up the loss at Denver many times over from the high prices in other parts of the Rocky Mountain territory.

PRICE SITUATION AT LOS ANGELES, CAL.

Tilford was also asked by defendants' counsel to explain the remarkable price situation at Los Angeles, to which we have already called attention. Petitioner's Exhibit 635 shows that the Standard's price at Los Angeles was reduced from 11 cents per gallon at the beginning of 1902 to 7.5 cents per gallon through the latter part of 1904 and nearly all of 1905 and 1906, while at the same time there was little or no reduction in prices at Seattle, Portland, and San Francisco. It shows further that throughout the period from July, 1902, to the end of 1906 the Standard was selling at a loss in Los Angeles ranging from 0.15 cent to 3.47 cents and during all of 1904, 1905, and 1906 (except one month) exceeding 2.25 cents; while at the same time it was selling at profits usually exceeding 3 cents per gallon in Seattle and Portland.

Tilford testified as to this situation that the competitors of the Standard cut under the Standard's price from time to time and necessitated this reduction at Los Angeles; that the business of these competitors was chiefly the manufacture of asphalt, and that refined oil was only a by-product which they had to get rid of at any price; and that in the majority of cases the Standard's price at Los Angeles was higher than those of competitors. (Vol. 17, p. 3501.) On cross-examination (p. 3527) the reason why the Standard's

price was higher than those of competitors was made evident; he said that these independents were selling an inferior grade of oil. This would naturally be the case if it be true, as Tilford stated, that they considered illuminating oil merely a by-product and would naturally not give the same care to its manufacture that the Standard does. Tilford's evidence does not show that, taking into consideration the quality of the oil, the independents cut the Standard's price.

H. C. Wasmann, called by the defendants, testified (vol. 17, pp. 3620–2) that he was in the employ of the Southern Refining Company, a California concern engaged in the manufacture of asphalt from March 1 to September 1, 1904; that under instructions he sold refined oil at a price 1 cent to 1.5 cents below the Standard's price, and that he had to make such price in order to get the business, as purchasers would not change without that inducement. He said further that he was in the employ of the Puente Oil Company, another independent concern, in 1906, and received similar instructions as to prices. He stated, however, that the grade of oil manufactured by these concerns was inferior; that it was uneven and unsatisfactory in burning quality (vol. 17, p. 3620), and (p. 3628) that the Standard Oil Company sold water white oil, and that the Puente Oil Company did not claim that its oil was water white or as good as water white.

It appears clearly from this testimony that the natural difference in value between the Standard's oils and the oils of these independent concerns was from 1 cent to 1.5 cents a gallon, and the fact that the independents sold under the Standard's price furnished no justification for the Standard continuing to lower its price until it showed the great losses which we have pointed out. The fact is that the Standard Oil Company was maintaining these low prices for the purpose of preventing the independent oil companies from making any profit on their business. It goes without saying that had the Standard not cut its prices from time to time to a point relatively lower, considering the quality of the oil, than the independents' prices, the independents would not have been so foolish as to continue to reduce their prices.

PAYMENT OF REBATES TO INDIVIDUAL CUSTOMERS.

In connection with the discussion of the general subject of price cutting in various localities throughout the country we have from time to time pointed out that, aside from making open cuts in the market price, the Standard Oil Company often sold oil to particular dealers, especially those who were buying or likely to buy independent oil, at special cut prices, usually brought about by means of rebates, the dealer paying the regular price and later being repaid a part of it. We also show later that the same practice was pursued by the bogus independent companies operated by the Standard. We propose here to call attention to certain particular cases of the payment of rebates in which that was the only or principal form of competition employed, so far as shown by the evidence.

REBATES IN CLEVELAND TERRITORY.

C. J. Castle, who was in the employ of the Standard Oil Company of Ohio from 1886 to 1900, testified (vol. 6, p. 3030) that his duties were particularly connected with the competitive trade, and that at different times he covered different parts of the territory of the Standard Oil Company of Ohio, which at first included Michigan and part of Indiana and most of Ohio, but was later confined to Ohio.

He testified (vol. 6, pp. 3037–8) that the Standard Oil Company used extensively in his territory a system of paying rebates to purchasers of oil; that the Standard never allowed a rebate except where it was expected to drive out competition, or where some dealer was about to leave the Standard and purchase from an independent; that these rebates were usually verbal arrangements and settlements were made monthly or at longer intervals. He said that in some cases there would be a small rebate in consideration of a contract on the part of the purchaser to buy his entire supplies for a certain period, and in other cases the rebate was

conditioned upon the dealer maintaining a low retail price, which the Standard or its representative would name; that the dealer would usually pay the open market price to the tank wagon man and the adjustment of the rebate would be made by some special employee like himself.

Petitioner's Exhibit 829 is a copy of a report made to J. W. Hoag, in April, 1898, by C. J. Castle, who was then "a sort of special man in the sales department, with duties directly under the manager." (Castle, vol. 6, p. 3030.) Castle testified that the occasion for making this report was that the Standard "wanted a list of all the special arrangements in effect at that time, and others did the same thing." (Vol. 6, p. 3071.) He said the report was a correct statement of the situation in the territory which he covered at that time, to-wit, eastern Ohio. (Vol. 6, p. 3043.) He also explained most of the individual situations referred to in this report. The report begins: "The following is a list of points where I have special arrangements."

YOUNGSTOWN, OHIO.

The first item in the report is as follows:

> *Youngstown, Ohio.*—R. Jeremiah operated three retail wagons, rebate to net the following prices: Water white and gasoline 4½c. in consideration of retail price of 7c. in effect since Jan. 24th. This arrangement succeeded the previous arrangement made July 22d, '96.
>
> W. Vahey, in consideration of reduced retail price, we make him net prices as follows: Diamond white, 4c.; water white, 4¼c.; head light and gasoline, 5c., in effect since Sept. 1st, '97.

Castle explained (vol. 6, pp. 3039–40) that because of competition of the Freedom Oil Company, which had a station at Youngstown, he made these arrangements with Jeremiah and Vahey to peddle oil to consumers at a low retail price which he (Castle) fixed, and protected them by rebates from the market price. He said the market price for water-white oil at that time was about 6 cents as compared with 4.5 cents which Jeremiah paid and 4.25 cents which Vahey paid. He said there was no profit in this business to the Standard Oil Company, but it rendered the business of the peddlers who were buying from the Freedom Oil Company unprofitable.

In this connection it may be noted that George L. Lane, who for some time prior to 1902 was in the employ of C. M. Lines, who operated peddling wagons for the Standard holding himself out to be independent (see p. 579, *post*), testified that in the territory around Youngstown, whenever independent companies would sell oil in barrels the Standard would immediately offer rebates of one-half cent to 2 cents per gallon to the purchaser, the amount of rebate depending on what was necessary to get the business. (Vol. 3, pp. 1362–3.)

MINERVA, OHIO.

The next item in this report is as follows:

> *Minerva.*—H. H. Hart and A. M. Hoopes, rebate on Albaine oil to net 4c. per gallon, in consideration of 5c. retail price; also to James Hodge (peddler), Albaine 4c, in consideration of 6c. retail price. This arrangement went into effect December 18th, and took the place of an arrangement made Nov. 5th, on a 7c. retail basis. The cause for this arrangement was the Freedom competition; they establishing an agent, four dealers immediately started buying from the competitor and are up to this time.

Castle testified that the low prices provided for at Minerva left no profit to the Standard. (Vol. 6, p. 3040.)

Silas W. Hart was called by the defendants and testified that he was working for the Standard at Minerva in 1897, the Standard having just started a bulk station there; that one Weston, a grain and general warehouse man, represented the Freedom Oil Company at Minerva, but he did not know whether the Standard or the Freedom was in the field first; that he knew of a price cut that was made by Weston in 1897; that it was reported to him that Weston and two or three grocers had made a cut in the retail price of 1 cent a gallon; that he went to the dealers to whom he was selling and told them to meet the price, and that there was quite a fight, but he did not remember much about it as it was eight years ago. (Vol. 13, pp. 1511–15.)

This is no answer whatever to the testimony of Mr. Castle regarding the rebate to H. H. Hart and A. M. Hoopes, and at best is too indefinite to be of any value. Even if it were true that the independent concerns cut the price first

in this town, that was no justification for the Standard's practice of making a secret price to particular dealers instead of meeting the alleged cut by reducing its open price.

The exhibit also mentions a rebate to a concern at Malvern, Ohio, which was only a few miles from Minerva, and which Castle said was made to enable this concern to meet the cut in the Minerva district. (Vol. 6, p. 3041.)

COLUMBIANA AND LEETONIA, OHIO.

These two towns are very close together. The report, Petitioner's Exhibit 829, mentions a rebate to Emmett Tullis of one-half cent at Columbiana, making the net price 5.5 cents, "competition by Waverly Oil Company."

At Leetonia, where the Freedom Oil Company was competing, the rebates were greater, as appears from the following extract from this report:

> *Leetonia.*—Emmett Tullis (peddler) rebate to net as follows: Albaine, 4c.; Eocene, 5c.; gasoline, 7c.; bulk, in consideration of retail prices of 7, 8, and 10c., respectively. This arrangement was made April 6th, and succeeded a previous arrangement made with L. W. Skiles, in December, '96. Mr. Tullis owns the equipment, except we furnish tank wagon.
>
> A. L. Wyand employed as peddler, at $1.70 per day, our equipment and kept at our expense. Entered into Oct. 20th. This arrangement was made because of Freedom competition through J. H. Peterson, peddler.

Castle said that the competition of the Waverly at Columbiana did not amount to much, but that there was active competition with the Freedom Oil Works at Leetonia, that Tullis did business at both places, and that he (Castle) made Tullis special prices in consideration of his maintaining a low retail price. He said that the peddler Wyand referred to in the report was hired by Castle with the instructions that he was to hold himself out as strictly independent. (Castle, vol. 6, pp. 3041–2.)

MASSILLON, OHIO.

The report continues:

> *Massillon.*—Nearly all of the dealers, except peddlers, are on half-cent rebate on Albaine and gasoline from tank wagon; arrangements made between Sept. 1st and Dec. 10th, and rebates payable principally April 1st, '98.

This is significant as showing that the rebates were not paid until a very considerable time after the purchase of the oil, the delay being presumably designed to enable the Standard to hold the dealers in line and compel them to buy exclusively from the Standard, which was a common provision in the rebate contracts.

The report then lists the names of three peddlers at Massillon who had rebates sufficient to bring their price of oil down to 5 cents; and also lists three other peddlers who are stated to have been hired at so much per day, the Standard owning the equipment and bearing the expense. It then continues, "all of these arrangements made on account of Freedom competition, and on account of reduced retail market."

Castle said that the Freedom had a station at Massillon, with a tank wagon selling to retail dealers, and that it also sold to two peddlers. The rebates allowed by the Standard to Reed, Steeley, and Miller, named in the report, were conditioned on their maintaining a certain retail price. Castle said also that the peddlers Steitz and Krier, named in the report, held themselves out to be independent of the Standard, although the Standard owned their rigs and paid them a salary. (Vol. 6, pp. 3042–3.)

The defendants called as a witness Jacob Graze, who was in the grocery business at Massillon at the time. He said (vol. 13, p. 1575) about that time the Standard Oil Company was paying him a rebate of one-half cent a gallon; that oil was very low about that time because the Freedom Oil Company was trying to get a foothold in Massillon, and that the Freedom would give 5 gallons of oil extra with every 50 gallons purchased; that the Standard agent found this out and offered his concern a rebate of one-half cent a gallon. When first questioned by defendants' counsel, Graze said that he did not remember that he ever talked to the Standard's agent about the Freedom's practice of giving 5 gallons of oil with every 50 purchased. He was then asked an exceedingly leading question by counsel as to whether he did not say in substance to the Standard's man that it was a business proposition, and that if he were to buy of the Standard he must have a price equal to the Freedom price; whereupon Graze immediately agreed with counsel and said

he thought he did say that in substance. On cross-examination Graze admitted that the Freedom had been doing business in Massillon for three or four years before 1898, and that he did not know who first cut the price at Massillon. (Vol. 13, p. 1576.)

This testimony therefore is inconclusive as to who started the price cutting, and even if it were started by the Freedom, that would be no excuse for the Standard's practice of giving rebates to particular dealers conditioned upon low retail prices, or for its practice of maintaining bogus independent peddlers to sell to the trade supplied by the Freedom.

NAVARRE, OHIO.

The next item in the report is as follows:

> *Navarre.*—All dealers, except J. C. Burkhalter, rebate one-half cent on Albaine, in consideration of retail price of seven cents, entered into Sept. 30th, '97. On Nov. 9th, new arrangements made with two dealers (D. R. and J. E. L.) in lower end of town, where Burkhalter is located, to rebate them, making net price on Albaine 4c. in consideration of 5c. retail price. Cause for this, Freedom Oil Co. peddler from Massillon and J. C. Burkhalter's retail price of six cents.

It will be noted from this report that the Standard arranged to have retail dealers situated near the dealer handling independent oil, sell at 5 cents retail, which was 1 cent lower than the competitor was selling. Castle also testified upon this situation. (Vol. 6, pp. 3043–4.)

OTHER TOWNS IN CASTLE'S TERRITORY.

The report also mentions rebates to certain dealers at Crystal Springs, Dalton, North Lawrence, Greenville, Canal Fulton, Cuyahoga Falls, Damascus, and Garfield, Ohio, all directed against the competition of the Freedom Oil Works, and mostly stated to be conditional upon a low retail price. Where the amount of the rebate is mentioned it ranges from one-half to 1 cent; in two cases, at Damascus and Garfield, the amount of the rebate is not stated, but the net price is stated as 4 cents and 5 cents. At Cuyahoga Falls, according to the report, rebates were made to dealers in consideration of low retail prices on account of competition of the

Cleveland Refining Company through a peddler named Blackburn. The latter situations are also described by Castle in his oral testimony. (Vol. 6, pp. 3044–5.)

This report is most complete evidence of the system of rebating which was in force at this time, and shows clearly that it was used either to get and hold dealers who were buying or were likely to buy from independent concerns; or to attack the independent concerns by cutting the price to particular dealers on condition that they should maintain a low retail price, thereby rendering unprofitable the business of those dealers who bought independent oil.

F. B. Squire, vice-president of the Standard Oil Company of Ohio, attacked the testimony and character of Mr. Castle by testifying that he was discharged in September, 1900, because he persisted in making special arrangements contrary to instructions. (Vol. 13, p. 1518.) Squire said that the statement had been made that Castle was making such special arrangements and he was directed to make a full report of all of them, and that it was in response to that request that he furnished Hoag with the letter of April 26, 1898 (Petitioner's Exhibit 829). Squire said that prior to this time neither he nor Hoag knew anything about these arrangements. It may be all right for Mr. Squire to speak for himself, and he may have known nothing about them because his duties were of too general a character. Hoag was directly in charge and it is hardly competent for Squire to swear that Hoag did not know about these instructions. Castle had previously testified on cross-examination (vol. 6, pp. 3069–73) that he had discussed similar rebate matters with Hoag, his superior officer, frequently; that the particular cases shown in Exhibit 829 were so discussed before the arrangements were made, that he could not remember the actual words of such conversations after a lapse of twelve years but the substance was that he was to make the arrangements. He had also testified (p. 3105) that he always reported such arrangements verbally to the office and always turned in vouchers for the settlements made thereunder.

Why was not Hoag called to contradict Castle, instead of Squire?

Squire also said that before this report was made to Hoag, Castle's duties had been restricted by reason of

similar things which had transpired before, but in what manner it was restricted he did not state, nor is he borne out by Castle's testimony.

It was absurd for Squire to claim that Castle was discharged because he made such special arrangements contrary to instructions. If, as he contends, Castle's duties had been already restricted prior to April 6, 1898, because he did such things, it is certainly remarkable, when this report showed the numerous arrangements which Castle had made, and that the Standard's property and equipment was being used by various of the peddlers with whom Castle made these arrangements, that he was not discharged (as Squire calls it) for more than two years thereafter. Castle said that he did not leave the Standard until September, 1900. Being asked whether he was discharged (vol. 6, p. 3104), he replied that the company in July, 1899, proposed to cut his salary from $2,000 to $1,500; that he told them that he would resign rather than accept the reduction, and that he continued with the company at the same salary until toward the end of the following year, when the matter of a reduction was again brought up, and he did resign rather than accept the cut. He said that Taplin, who was Squire's assistant, told him that the Standard had got to reduce expenses in order to make a better showing as to the cost of doing business; that no complaint was made about the services he had rendered, and that neither Hoag nor anybody else complained about the special arrangements shown in Petitioner's Exhibit 829. (Vol. 6, pp. 3104–5.) This is all there is to the alleged discharge of Castle, and Squire's statement is simply his own false conclusion of what took place. Squire did not claim that he ever said a word to Castle or wrote to him on the subject, and did not say what was said by anybody to Castle. All of Squire's testimony on this subject is transparently misleading. This is not the first time, by any means, that the Standard Oil Company has tried to escape the charge of unfair competition by insisting that its subordinates have violated instructions.

CHARDON, OHIO.

M. M. Hossler testified (vol. 6, pp. 2941–3) that he was peddling oil at Chardon, Ohio; that for many years he bought his oil from the Standard; that he stopped doing so

in 1901, and many grocers at Chardon also stopped at that time and bought from independent concerns; that immediately thereafter Cobb, the Standard's agent, made him a proposition that he should sell oil at retail for 8 and 10 cents per gallon for the respective grades, the wholesale price which he had theretofore paid the Standard being 8.5 and 10.5 cents. Cobb told him that he would be rebated 3.5 cents per gallon for all the oil he would sell at this cut price. Cobb also said that if Hossler would not accept this, the Standard would put a wagon on the streets in Chardon. Hossler refused and immediately thereafter the wagon appeared and commenced to retail at 8 and 10 cents a gallon.

On cross-examination Hossler was shown a letter which he had signed on April 6, 1905, which related to the situation in 1901 and 1902, and which in a certain measure tends to contradict his testimony. He said, however, that Cobb brought this letter to him already prepared, and that he signed it at the urgent request of Cobb, out of friendship, without reading more than a small part of it. (Vol. 6, pp. 2943–9.) He in no way modified his testimony after being shown this letter by defendants' counsel.

REBATES AT POINTS IN MICHIGAN.

Castle produced Petitioner's Exhibit 836, a letter from Thomas Goodwillie to Castle, written in 1889. Castle was then representing the Standard at Detroit and Port Huron, and Goodwillie was his superior officer. He testified (vol. 6, pp. 3059–60) that the Mr. Campfield mentioned in the letter was handling independent oil at Port Huron. The letter suggests to Castle the payment of a rebate of one-half cent per gallon to Sanders & Co., merchants at Port Huron. (Vol. 6, pp. 3059–60.) Castle testified that at this time the Standard cut the wholesale price per gallon as low as 6 cents, and even gave a rebate of 1 cent a gallon from that price, in order to attack this man Campfield. Petitioner's Exhibit 837 is another letter from Goodwillie to Castle on this subject, dated July 30, 1889, in which Goodwillie says:

> Our object, of course, in holding this price at Port Huron is to compel Mr. Campfield to sell his oil at 6 cents, if possible, and our idea would be to have you sell only the two or three parties with whom you had an arrangement who agreed to retail oil at 6 cents, with the

> understanding that they shall advertise the matter and compel the other grocers to sell at same price; this will oblige Mr. Campfield to sell at 6 cents in order to supply his own trade. * * * These parties should be so situated as to advertise the low-selling price all over the town, that is to say, we should not have them all in one location. * * * Whenever any of the other dealers outside of the few you are supplying want to know the price of oil we would suggest that he [the tank-wagon man at Port Huron] name his regular market there, which is 7¼ cents.

Castle said that as a result of this arrangement Campfield was wiped out of business, and he (Castle) finally bought up his wagon, tank, etc., for the Standard. (Vol. 6, p. 3060.)

This shows clearly that at least at this time Castle was not working without authority of his superior officers.

Frank Gamerl, who was employed by the Standard at the time referred to in his testimony, said that in November, 1905, three merchants at Portland, Mich., were buying independent oil, and that the price charged by these and other merchants in the town to the consumer was 12 cents per gallon; that he (Gamerl) was sent to Portland, under instructions of Drake, and told these merchants that if they did not stop buying independent oil the Standard would make a price of 6 cents to the consumer. When they refused to buy from the Standard, this was actually done; the Standard arranging with some of its customers to retail oil at 6 cents, allowing them a rebate sufficient to bring the cost to them down to 3 cents, whereas the prevailing wholesale price was 8 or 8.5 cents. This arrangement continued for a considerable time, and Gamerl went to Portland four or five times and paid the merchants these rebates. (Vol. 6, pp. 3139–41.)

About the same time a similar situation existed at Saranac, Mich., and Gamerl went there and told the merchants who were buying independent oil that unless they stopped the same thing would be done as was done at Portland, and these merchants accordingly stopped buying independent oil. (Vol. 6, p. 3141.)

REBATES IN DECATUR (ILL.) TERRITORY.

Maywood Maxon, who for many years was special agent of the Standard for the Decatur (Ill.) district, which included a considerable territory, testified (vol. 3, p. 1295) that when

independent dealers went into a town and got a number of merchants to join in buying a carload of oil so as to get the carload freight rate, it was the practice of the Standard to go to the largest purchaser in that carload and offer him a special rebate from the market price to induce him to countermand his part of the order; that this would break up the carload shipment and prevent the independent oil from coming into that locality.

He further testified that at Paris, Ill., about 1899, an independent concern started business, and that acting under the instructions of Collings, vice-president of the Standard of Kentucky, or E. B. Stanley, general manager, he sent a man to Paris and arranged with a merchant there to sell oil to the consumer at 5 cents a gallon, whereas the wholesale price to dealers had previously been 10.5 cents. This merchant was given by the Standard a rebate of 1 cent per gallon off the 5-cent price. The result was that the independent concern was forced out of business after about a year, and the Standard bought the plant, whereupon the price of oil was restored to the former basis. (Vol. 3, pp. 1293, 1294, 1313.)

Maxon also stated that the same practice was pursued against independent concerns at Urbana, Ill., in 1891, and at Vandalia, Ill., in 1900 (vol. 3, p. 1294); that the instructions as to what he should do at Urbana were given by R. W. Ritchie, formerly general manager of the Standard Oil Company of Kentucky, and that the instructions regarding Vandalia were given by Collings. (Vol. 3, pp. 1312–13.)

Collings, called by the defendants, was asked the following questions (vol. 12, p. 890):

> Q. Mr. Maxon also testified that under instructions from you, R. N. Reed, and E. B. Stanley he made deals with merchants at Paris, Illinois, in 1898, at Urbana in 1891, and at Vandalia in 1900, whereby a 5-cent price was made at those towns in order to drive out the competitor. What have you to say with respect to that statement of the witness Maxon?—A. That is not true; I never heard of it, and it could not have been done without my knowledge.
>
> Q. Was there ever a 5-cent price at any of these places in the years that I have mentioned?—A. I never heard of it.
>
> Q. You would have known of it if there had been?—A. I would.

Counsel was in error in mentioning R. N. Reed as giving these instructions and also in stating that Maxon had said that a 5-cent price was established in all these places. Maxon had mentioned the 5-cent price only regarding Paris, and only said as to Urbana and Vandalia that similar tactics were used. There is no evidence that Collings had anything to do with this territory in 1891. (See his testimony, vol. 12, p. 885.) The defendants should have called R. W. Ritchie and E. B. Stanley as well as Collings. There were various men in the Standard Oil Company of Kentucky who had authority to transact this kind of business. (Collings, vol. 12, pp. 946, 959.) They often signed Collings's name to letters which he never saw and wrote letters in their own names. Collings is not competent to make denials regarding every transaction in the vast territory of the Standard Oil Company of Kentucky. Maxon in his testimony had mentioned the individual names of the dealers with whom he made these arrangements; he knew the subject he was testifying about.

REBATES IN PEORIA (ILL.) TERRITORY.

F. L. Hibbs testified (vol. 3, pp. 1332–4) that while he was refined-oil salesman for the Standard in the Peoria territory he was instructed to go to Aledo, Ill., where the Royal Oil Company had sold a carload of oil, and to try to break up this carload; that he succeeded in getting some of the merchants to cancel their orders by giving them a rebate of one-half cent per gallon on all oil which they might buy during the succeeding year, and that to two merchants he gave 50 or 75 gallons of oil free to countermand their orders; and that he sent telegrams canceling orders, at the expense of the Standard.

Petitioner's Exhibit 906 is a letter which R. E. Lashley, who in 1903 was the special agent of the Standard at Peoria, admitted was sent from his office. (Vol. 12, p. 1018.) It is addressed to F. L. Hibbs, September 10, 1903. In this letter it is stated:

> This is in line with my talk of a few days ago in regard to agreeing to sell a customer 10, 15, or not over 20 bbls. of Elaine, White Seal, or Eocene at a stipulated price, to replace so-called high-grade National Light oil, sold by the Royal Oil Company. * * *

As you will see, you can take a contract for a stipulated number of barrels of Elaine, but not to exceed 20 bbls. without taking the matter up with us, at 1¢. per gal. less than our open-market price. * * *

I want to impress on you the importance of having all such orders you may take to replace National Light from the Royal Oil Co., or White Seal from the Brooks Oil Co., or so-called high-grade competitive oils. Now I want each refined-oil salesman to make a thorough canvass of his territory, getting all of this business in line.

The letter also contains other cautions against using this special price except where necessary on account of competitive business.

Hibbs testified (vol. 3, p. 1333) that he left the Standard and went with the Royal Oil Company; that he sold a carload of oil at Farmington, Ill., and that the Standard sent a man named Safford from Monmouth, and also a man named Firebaugh, to follow him up and get the orders countermanded by cutting prices and giving rebates.

Z. D. Ells, manager of the Royal Oil Company of Peoria testified (vol. 3, p. 1375) that in 1905 the Royal Oil Company sold a carload of oil in Farmington; that there were only five dealers there, and that it was necessary to get them all to join in order to make up a carload; that a year later when he visited Farmington and tried to sell another carload he found that the dealer using the largest amount of oil was receiving a rebate from the Standard, and would not join with the other dealers J. L. Trann, the Standard's manager at Peoria (succeeding Lashley), called by the defendants, admitted on cross-examination (vol. 12, p. 1030) that a rebate of half a cent a gallon was allowed to the largest dealer at Farmington.

Trann testified, however, on direct examination that he gave no instructions to Safford or Firebaugh to make cuts at Farmington for the purpose of getting orders countermanded. This falls far short of contradicting the positive statement of Hibbs. Trann also stated that he never instructed any of the employees to cut below competitors' prices, but that he had instructed them to make contracts to meet competitors' prices; that he himself had no authority except a leeway to make a contract at half a cent below the market with a large dealer. (Vol. 12, p. 1028.)

On cross-examination Trann said (vol. 12, p. 1031) at first that he allowed rebates on contract sales to compete with the Royal Oil Company, but, after a suggestion by defendants' counsel he said that these special contracts were made with every large dealer whether there was competition or not, if the dealer asked for it. Later he said that he could not say that they did give them to all large dealers, but they did to some of them, and that this was not "necessarily" when they bought from some one else. His testimony on this point is very vascillating. He evidently wanted to give the impression that these rebates were not particularly due to competition. It should be noted that these so-called large dealers are not even claimed to be wholesale dealers; they were simply the ordinary merchants in country towns. There can be no doubt that the rebates were usually allowed for the purpose of preventing independent oil from being sold in those towns in carload lots, since, if the largest merchant did not participate in ordering the carload, it would be almost if not wholly impossible to make one up. The letters which were shown to Trann on cross-examination, and which he admitted emanated from his office, showed clearly the policy of allowing these rebates solely as a means of attacking competitors. For example, Petitioner's Exhibit 907, a letter from Trann to Hibbs, dated August 19, 1904, on the subject of orders for Elaine oil, states in part:

> What we wish to call your attention to particularly is the fact that two of these parties, C. A. Knappenberger, of La Harpe, and J. A. Wright of La Harpe, have never bought any outside goods at all, and we have no record of George Grigsby, of Blandinsville, getting anything since last March.
>
> This low price on Elaine oil was given us to compete with National Light, and was to be used only where it was absolutely necessary, where the party was buying from the competitor, and by making this price on Elaine we could get the business.

On August 17, 1904, moreover, Trann wrote to Hibbs (Petitioner's Exhibit 913) regarding Elaine oil:

> * * * The price I gave you of 16 cents was a minimum price, and supposed to be just used where it was absolutely necessary to get the business. * * *

On his redirect examination (vol. 12, p. 1046) Trann said that in every place where the Royal Oil Company made a sale in a town it was invariably a half cent below the market that the Standard was carrying at that point, and that the rebates of half a cent allowed by the Standard merely brought its price to the same level. On recross-examination he was asked with regard to a particular case in which the Standard had paid a rebate (vol. 12, p. 1047):

> Q. Do you swear that the Royal Oil Company had sold oil to Cady Brothers at a half cent under this price named by you?—A. I presume they did, or we——
> Q. Do you know anything about it?—A. I don't know positively; no, sir.

He was similarly asked with regard to another individual customer and made a similar answer. There is not a word in any of the exhibits relating to this territory—being letters from Lashley and Trann regarding these cut prices on Elaine oil—to indicate that the Royal Oil Company or any other independent oil company had been cutting the Standard's price. In them that is nowhere given as a reason for making these rebate contracts, and it is very strange that it should not have been mentioned if such was the case. Even if it were true that the Royal Company was cutting the price, would that justify the Standard's practice of meeting the price only in the case of dealers who were buying from independent companies and keeping up prices to others? This method of competition would enable the Standard to make a profit where independent concerns could not.

Rebates were allowed not only on the high-grade Elaine oil, but also on Perfection oil, an ordinary grade. Petitioner's Exhibit 912 is a letter from Trann's office to Hibbs dated December 29, 1904, stating that Collings had given authority to close contracts with three concerns at Brimfield, Ill., covering their requirements of Perfection oil from tank wagons until April 1, 1905, at one-half cent off the regular Brimfield market price,

> * * * they to send their tickets in at the end of each month. Make this as verbal agreement and have it clearly and distinctly understood that it expires April 1st, *and is in consideration of their giving us all their business.*

Trann said that he did not know why these merchants were given this special price, but the letter explains itself. There was undoubtedly competition at Brimfield, and these contracts were made to keep these merchants from buying any oil from independent concerns.

GALLATIN, TENN.

It was brought out on the cross-examination of Collings (vol. 12, pp. 947–48) that one Holt and one Rutherford, employees of the Standard Oil Company of Kentucky, and the Standard of Kentucky itself, were indicted in Tennessee for entering into an unlawful agreement for the purpose of restraining competition; that Holt was tried, convicted, and sentenced to pay a fine of $3,000, which the Standard Oil Company paid for him; that the Standard Oil Company was by the lower court ousted from the State of Tennessee, the decision was affirmed by the Supreme Court of Tennessee, and the case has been appealed to the Supreme Court of the United States.

It appears that orders for a carload of oil had been secured by the Evansville Oil Company, an independent concern, from merchants at Gallatin, Tenn., and that Rutherford and Holt broke up this carload by agreeing to give to each of the merchants 100 gallons of oil free if they would countermand their orders, which they did. Collings testified that Holt did this on his own initiative and without the knowledge and approval of the Standard Oil Company. He had given the same testimony before the court in the Tennessee case and had asserted that the Standard Oil Company did not tolerate that kind of practice. We have discussed his evidence in this case at page 476, *ante*. It seems that the Tennessee courts paid but little attention to Collings's testimony. No court would have imposed a fine of $3,000 and ousted the Standard from the State of Tennessee unless there had been evidence to convince the court that this was not an isolated instance of action without authority. It is certainly a striking thing that if the Standard did not approve of what Holt had done it should have paid his fine for him and also should have retained him in its employment. Collings said he told Holt he felt very much like discharging him, but he did not discharge him.

REBATES IN BIRMINGHAM (ALA.) TERRITORY.

G. T. Wofford, who was chief clerk and assistant to the manager of the Birmingham headquarters of the Standard Oil Company of Kentucky from about 1898 to 1902, testified (vol. 5, p. 2155) that rebates were offered to persons who were about to buy or had bought independent oil in his territory (which included all or the larger part of Alabama); that very often an independent company would make up a carload of oil in a town, that the Standard would generally find it out before the oil was shipped and often before the salesman got out of town, and would send a man to the town and undertake, by offering a rebate, to get a purchaser to countermand his portion of the carload order; that rebates of 50 cents per barrel (1 cent per gallon) would be offered on all oil that a man would purchase for a year.

He also testified that at Leighton, Ala., the General Oil Company of Memphis, an independent concern, began shipping oil in barrel lots to a dealer; that the Standard immediately sent a man to Leighton with instructions to select the principal dealer in the town and make arrangements with him to sell oil to consumers at 10 cents, the Standard's price at that time to retail dealers being 15 cents; that this merchant was promised a rebate at the end of each month of 1 cent or 1.5 cents a gallon on all oil which he sold; and that in this way this dealer got most of the oil business. (Vol. 5, pp. 2155–6.)

Collings, vice-president of the Standard of Kentucky, testified (vol. 12, p. 908) that he never heard of this transaction and that he did not believe that a carload of oil could be made up at Leighton, because Leighton was such a small town. Wofford had not stated that the General Oil Company sold at Leighton in carloads; he said in barrel lots. Besides it appears that carloads are often shipped by independent concerns to a small town and part of the oil delivered thence to dealers in neighboring towns. There are evidently a great many things that Collings never heard of which nevertheless happened. His jurisdiction was far too general to justify him in contradicting the testimony of witnesses about individual transactions in small towns.

REBATES IN MISSOURI AND KANSAS.

E. M. Wilhoit, who started an independent oil business at Springfield, Mo., some years ago, testified that he began selling at practically the same price as the Waters-Pierce Oil Company, but that that company took business away from him by secret rebates to the dealers who had been buying from him; that the Waters-Pierce could probably control 75 or 80 per cent of the business at its own price and did not need to give all its customers this special price. (Vol. 3, pp. 1268–9.)

W. H. Hawkins, who was superintendent of tank wagons for the Standard Oil Company of Indiana and its predecessor, the Consolidated Tank Line Company, at Kansas City, Mo., during the nineties, testified that it was his duty to see that the Standard concerns got all the business and that one method was by paying rebates to persons who were buying independent oil; that for the purpose of ascertaining who were buying independent oil the Standard concerns hired a man to follow each wagon; and that the aggregate amount of rebates got very heavy toward the end of his employment, somewhere near $3,500 a month. He also said that at one time there were 200 or 250 grocers in Kansas City to whom they were giving rebates, out of perhaps a thousand altogether; that his recollection was that the average rebate on the total gallonage sold was something like a quarter of a cent. (Vol. 2, pp. 985–6, 988.)

L. J. Drake, who had general charge of the business of the Consolidated Tank Line in Kansas City and a large territory, was asked what authority Hawkins had for making these rebate arrangements, and his reply was that he had no authority from him (Drake), and that the only authority he could get would be from the local manager, George Mayer, but that Mayer would have to get Drake's authority if there was any "radical change" made in prices. This is certainly no answer to the positive testimony of Hawkins. Drake did not explain what he meant by radical changes, and admitted that Mayer had authority to make other changes without consulting him. (Vol. 13, pp. 1069–70.) On cross-examination (pp. 1099–1100) Drake admitted that special prices were sometimes made to particular dealers, and that possibly

some of them were retail merchants. He at first stated that the Standard followed the prices made by competitors, but qualified his statement that the Standard did not cut below the prices of competitors by the phrase "that I know of," and said he would not swear that the agents in his territory had never cut prices below those of competitors. On redirect examination he said that the Standard very seldom cut prices below those of competitors unless there was a very strong competition and they were forced to do it after competitors had cut prices. He said that he never initiated a cut against a competitor, but he did not say that the Standard never did, though he said that it was his experience and observation that cuts were initiated by competitors, and that it was the only way they could get business since the Standard at the outset had all the business and the competitor was coming into a new field.

It may be, of course, that independent concerns coming into a field where the Standard had previously had a monopoly and had been charging excessive prices would cut the prices of the Standard, but that certainly was no justification of the Standard's policy of cutting still further, and particularly of cutting by means of secret rebates to the particular customers sought by the independents, while maintaining higher prices to the other dealers in the same town.

OPERATION OF BOGUS INDEPENDENT CONCERNS.

It is alleged in the petition (vol. A, pp. 105–7) and denied in the answer (vol. A, pp. 432–3) that as an unfair method of competition the defendants have at various times and places throughout the country operated bogus independent concerns engaged in the sale and manufacture of petroleum products; that these concerns have held themselves out to the trade as independent of the defendants although actually controlled by them; that they have been used to cut the prices of petroleum products to the customers of independent refiners and dealers, thus enabling the defendants to carry on a competitive warfare against such refiners and dealers without necessitating the reduction of the defendants' prices on the larger part of the products sold in the same localities; and that various of the bogus independent concerns so operated by the defendants were originally bona fide independent concerns which were bought up by the defendants.

A great deal of evidence was introduced on this subject showing that the 63 concerns listed below,—some of which were only individuals, a few were actual corporations, while others were assumed company names,—have been operated as bogus independent concerns in various parts of the country. As to most of them the evidence shows in detail that they actually pursued the practices alleged in the petition. In the case of those concerns whose operations we do not discuss at length in the following pages we have cited the reference to the evidence proving that they were controlled by the Standard Oil Company and operated as if independent.

Operating in New York and New England:

Charles E. Farrell (peddler), at Oneonta and Troy, N. Y.

Troy Oil Works, Troy, N. Y. (McMillan, vol. 12, p. 720).

Paragon Oil Company, Troy, N. Y. (Messner, vol. 20, pp. 51–52).
Jenny Manufacturing Company, Boston, Mass. (Hisgen, vol. 4, pp. 1811–12).
Household Supply Company, in and around Holyoke and Springfield, Mass. (Hisgen, vol. 4, pp. 1832–33; King, vol. 3, p. 1508).
Cordner (peddler), Springfield, Mass. (Hisgen, vol. 4, pp. 1804–11).

Operating in the Baltimore division:

Paragon Oil Company, Maryland and Delaware points (Mahle, vol. 5, pp. 2356–57; Metzel, vol. 5, pp. 2411–12).
Eureka Oil Company, Norfolk, Va., and various points in Maryland, Virginia, and North Carolina.
Argand Refining Company, Richmond, Va.
Southern Oil Company, Richmond, Winchester, and other points in Virginia.
Eagle Oil Works, Baltimore.
William G. Davidson, Baltimore.
Home Safety Oil Delivery, Baltimore, Norfolk, and Washington.
Dixie Oil Works, very extensively through the South.

Operating in territory of the Atlantic Refining Company:

Special wagons, bearing no name, at Philadelphia.

Operating in territory of the Standard Oil Company of Kentucky, reporting to the Cincinnati office:

People's Oil Company, Atlanta, Ga.
Alabama Oil Company, Birmingham, Ala.
Haynes peddling wagons, Columbus, Ohio.
Home Safety Oil Company, Terre Haute, Ind.
Hamilton Oil Company, Terre Haute, Ind.
Hults and Day (peddlers), Terre Haute, Ind.
Paragon Oil Company, Decatur, Ill.
Banner Oil Company, Springfield, Ill.
Kercher Brothers, Springfield, Ill.
Springfield Oil Delivery, Springfield, Ill.
Consumers Oil Company, Macon, Ga.
Kercher and Vincennes Oil Company, Vincennes, Ind.
Kercher, at Mobile, Ala. (Kercher, vol. 6, p. 2838).

Kercher's peddler, at Pekin, Ill. (Kercher, vol. 6, p. 2996).

Brooks Oil Company, Indianapolis, Ind. (Cooke, vol. 5, pp. 2517–18).

Capitol City Oil Company, Indianapolis, Ind.

Domestic Oil Company, Indianapolis, Ind.

Cassetty Oil Company, Nashville, Tenn. (Collings, vol. 12, pp. 951–55).

Operating in territory of the Standard Oil Company of Ohio, reporting to the Cleveland office:

C. M. Lines, in many towns about Cleveland.

Red Line Wagons, Cleveland.

Cleveland Oil Delivery, Cleveland.

Home Oil and Gasoline Delivery, in towns about Cleveland.

Morgan (peddler), Oberlin, Ohio.

New American Oil Company, Mansfield, Canton, and other Ohio places.

Toledo Oil Works, Toledo, Ohio.

Moore (peddler), New London, Ohio. (Darby, vol. 5, pp. 2580–86.)

Operating in territory of the Waters-Pierce Oil Company and Standard Oil Company of Indiana:

Republic Oil Company (a corporation), operating in Ohio, Indiana, Illinois, Michigan, Iowa, Missouri, Kansas, and Nebraska.

International Oil Works, St. Louis, Mo. (Ackert, vol. 3, p. 1113.)

D. M. John (peddler), Joplin, Mo. (John, vol. 3, p. 1040.)

Sutton Bros., Kansas City, Mo. (Hawkins, vol. 3, pp. 1242–44.)

Excelsior Oil Company, Wichita, Topeka, Hutchinson, and Atchison, Kans. (Hawkins, vol. 3, pp. 1243–44.)

The testimony also discloses the following additional bogus concerns doing business in various large cities, the operations of which were not gone into in detail:

Eastern Oil and Gasoline Supply, Boston (King, vol. 3, p. 1507).

Liberty Oil Co., Boston (King, vol. 3, pp. 1511–12).
Mehlen's Family Oil Company, New York (King, vol. 3, p. 1509).
Funke Brothers, Brooklyn (King, vol. 3, p. 1510).
Mill and Stanley Works, Long Island City (Lines, vol. 6, p. 3206).
Electric Light Oil Delivery, Philadelphia (Lines, vol. 6, p. 3206).
Oakdale Oil Works, Philadelphia (Cutler, vol. 2, p. 851).
Denlinger Brothers, Pittsburg (Cutler, vol. 2, p. 849).
Sunlight Oil and Gasoline Delivery, Cincinnati (Westcott, vol. 2, p. 722; Lines, vol. 6, p. 3206).
White's Golden Lubricator Company, Cincinnati (Westcott, vol. 2, p. 717).
Protection Oil Company, Cincinnati (Westcott, vol. 2, p. 718).
C. P. Wagner & Co. (Westcott, vol. 2, p. 718).
One-gallon can peddling concern at South Chicago, Ill., name not ascertained (Lines, vol. 6, p. 3206).
One-gallon can peddling concern at New Orleans, La., name not ascertained (Lines, vol. 6, p. 3206).

CHARLES E. FARRELL, PEDDLER, ONEONTA, N. Y., AND TROY, N. Y.

ONEONTA, N. Y.

Charles E. Farrell, who testified as a witness for the Government, described in detail the remarkable operations which he carried out under the instruction of Standard officials. (Vol. 5, pp. 2433–50.) His testimony is corroborated by correspondence and is in no way contradicted or explained by any witness for the defendants.

Farrell, who had previously been a tank-wagon driver for the Standard Oil Company, was approached at his home at night about March, 1899, by Thomas H. Burke, the Standard's agent at Troy, N. Y., who informed him that McMillan, the Standard's manager at Albany, had some important work for him to do which must be kept entirely secret, even from Farrell's own family. At his instance Farrell met McMillan and also Mason, manager for the

Standard at Binghamton, N. Y. They told him that the Standard had competition at Oneonta, N. Y., from the Tiona Oil Company, which had got the bulk of the trade, and that they wanted to get it back; that for that purpose they wanted to get the storekeepers to fighting with one another. He was directed to go to the Tiona Oil Company at Binghamton, N. Y., and buy 25 barrels of oil and have it shipped to Worcester, from which place he was to reship it to Oneonta. The reason for this procedure was that if the Tiona Oil Company knew that he wanted to sell oil at Oneonta, where it was already doing business, it would not supply him. They directed him to sell this oil at Oneonta to consumers, putting the sign "Tiona oil" on his wagon, and to sell it at 8 cents a gallon, which was the same price he had to pay the Tiona for it at Binghamton.

Mason and McMillan told Farrell that he must not tell anyone for whom he was working, but must say that he was working for himself, and they suggested a false excuse which he might give the manager of the Tiona Oil Company when purchasing this oil. He was also directed how he should conduct correspondence with Mason.

Farrell followed out these instructions; put a wagon on the streets at Oneonta with a sign, "Tiona oil" upon it, and sold the oil to consumers at 8 cents a gallon, which was the same as the wholesale price to retail dealers. The retail storekeepers had been selling at 10 cents a gallon. The result of the cut which he made was that the merchants got to cutting prices against him and then against one another, and finally sold oil at 2 cents a gallon, and one put out a sign, "Free oil; come and get your cans filled."

Farrell bought one other lot of oil, 15 barrels, from the Tiona, but later, being unable to get any more Tiona oil, under instructions he got his oil directly from the Standard Oil Company, though it was shipped in blank-head barrels, which were dark in color, while the Standard's barrels were green. After this he did not display the sign "Tiona oil."

He was instructed by Mason not to try to sell too much oil, as, of course, a loss was involved on every gallon sold. The object, as shown by the correspondence put in evidence, was to get and keep the storekeepers in conflict with one

another on price cutting. (See particularly Petitioner's Exhibit 765–A, a letter from Mason to Farrell.)

The most striking thing in this whole transaction is the extraordinary secrecy which was maintained at the expense of continuous and deliberate falsehood. Farrell had been instructed to deny any connection with the Standard Oil Company, and he did so repeatedly. In one case, for example, Messner, who was one of the managers of the Tiona Oil Company, accused him of being employed by the Standard, and Farrell denied it. Again, Burke, who had first spoken to Farrell regarding the work at Oneonta, came secretly to Oneonta to see him at one time, wearing glasses, something he had never worn before, and told Farrell that he had registered at the hotel in the name of Messner, Messner being an officer of the Tiona Oil Company.

In accordance with instructions which he had received from Mason and McMillan, Mr. Farrell carried on his correspondence with Mason, whose headquarters were at Binghamton, by sending letters to a man named George Craven, at a certain post-office box in Albany. Craven forwarded the letters tc Mason. The letters written by both Farrell and Mason were on plain paper without letter head, and most of the letters which came to Farrell were unsigned, though he knew they were from Mason because of the instructions he had received and because his letters sent to Craven brought forth the answers he received.

These letters also are complete proof of the secrecy of this transaction. The first, which was signed by Mason and written from Binghamton on April 7, 1899, is in part as follows (Petitioner's Exhibit 759):

> I have your various letters, especially the one of the 14th. Let me say to you that our tank-wagon man, who came to see you, has no knowledge whatever of who you are, and I learn from him that he came on behalf of the merchants of the town, who are anxious to get rid of you. Our salesman who visits Oneonta knows nothing whatever of who you are, nor does anyone except those you saw in our office, and under no circumstances whatever do we want anyone to get the slightest hint that we are in any way concerned in this matter. The Tiona people are denying that they have anything to do with it, and claiming that we started you there.

Of course we are denying this, and you must be very cautious and not allow anyone to try to pump you, to draw out any facts. Don't allow anyone to tell you that they come from the Standard Oil Company, and try and learn anything from you.

In regard to your saying that you think you "had better come up and see how the feeling is," I would say that I have been up there, and know just what the situation is. Of course I did not come near you, but so far the whole plan is working all right; but it must be kept a strict secret. You are doing first-rate, and carrying out the plan excellently, and very much to my satisfaction.

* * * * *

**As soon as you have read this, set a match to it and burn it up, so that there can be no possible chance of it being seen by anyone. Write me, through Mr. Craven, that you have received this letter and that you have destroyed it after reading the same. Don't tear it up, for some person might get hold of the pieces of paper, and put them together, but if you burn it with a match, then it is out of the way wholly.* Some of the merchants are inclined to believe the Tiona's story, that we have started you there. Of course we have denied this emphatically, but some of them are suspicious, and are therefore watching very close to get hold of any facts they can. I tell you these things so as to put you on your guard to be doubly cautious.

Yours truly, WM. MASON.

Petitioner's Exhibit 760–A, another letter from Mason, although not signed, also closes with the language: "Please treat this letter the same as the former one and burn it up after you have read it."

In another unsigned letter, Petitioner's Exhibit 765–A, Mason advises Mr. Farrell to keep off the main street and away from the business portion of Oneonta as much as possible while not actually engaged in peddling oil, "as the storekeepers are quick to notice the fact that you are not trying very hard to sell oil because they see you around so much with your good clothes on." This letter refers to the point already mentioned, that Farrell was not to try to sell more oil than was necessary to make trouble.

Finally, about six months after he started in, Farrell sold his horse and wagon and left Oneonta. This he did under

* Italics are ours.

instructions from Mason in a letter dated September 21, 1899 (Petitioner's Exhibit 767-A). Among other things this letter stated:

> Now, as an explanation to the people why you are going to give up you can say that the price for oil has gone up so high that you can not buy any oil at a price which will allow you to sell it and get a living, and you see no chance of doing any business because the merchants are selling at such a low figure and people will buy of the stores rather than from you. You want to circulate this story carefully around.

This letter also corroborates the testimony of Farrell that while he had maintained a retail price of 8 cents, the same as the wholesale price, the dealers had got to cutting prices and were selling much below that. This was what the Standard had sought, and, it having been accomplished, Farrell's task was ended.

This whole transaction is a striking illustration of the extent to which the Standard Oil Company was willing to go in order to drive out competition. We have here the managers of the Binghamton division and of the Albany division, important officers of the Standard, conspiring together to send Farrell to Oneonta and instructing him how to deceive the trade and conceal his identity, and to operate in such a manner as to injure the business of the Tiona Oil Company, using that company's own oil. In pursuit of this plan they instructed him to deceive, and they themselves, according to their own written statements, deceived also.

Aside from the letters which we have specifically mentioned the Government introduced several other letters from Mason, and one from Burke, to Farrell, namely, Petitioner's Exhibits 761, 762, 763, 764, and 766, all of which confirm Farrell's testimony.

TROY, N. Y.

About six months after Farrell returned from Oneonta to Albany, McMillan, the Standard's manager at Albany, told him that a man by the name of Starks, at Troy, who had formerly been buying oil from the Standard, was then buying from Dauchy, a wholesale dealer who handled independent oil. Under McMillan's directions Farrell bought a horse, and got from McKenzie (manager of the Troy Oil Works,

another bogus independent concern which the Standard was operating in Troy) a wagon and cans similar to those used by Starks. He followed Starks's wagon around and thus secured the addresses of Starks's customers. He then went to Dauchy and bought oil from him, under McMillan's instructions hired a barn, and had an expressman draw the oil from Dauchy's place to the barn; and then proceeded to sell this oil to Starks's trade at 8 cents a gallon, which was the same price that Farrell had to pay Dauchy for it. In this way Farrell got about half of Starks's trade away from him. Under instructions of McMillan and Burke he told the people in Troy that he was an independent dealer. This was continued until Starks quit buying independent oil and went back to the Standard, whereupon, the object of the transaction having been accomplished, Farrell discontinued his business. (Farrell, vol. 5, pp. 2451–3.)

The testimony of Farrell regarding the transactions at Oneonta and Troy was corroborated by W. D. Todd, one of the officers of the Tiona Oil Company (vol. 6, p. 3220).

It is significant that although McMillan was put on the witness stand by the defendants to testify regarding other matters at Albany and vicinity, he was absolutely silent regarding the testimony of Farrell, nor were any officers or employees of the Standard, or any other witnesses, called to contradict or explain this evidence.

BOGUS INDEPENDENT COMPANIES MANAGED BY L. BLAUSTEIN.

Four bogus independent companies operating in the Baltimore Division of the Standard of New Jersey (which includes the South Atlantic States) were under the management of one L. Blaustein. These four companies were the Eureka Oil Company, operating in Norfolk, Va., and in various North Carolina towns; the Argand Refining Company, at Richmond; the Southern Oil Company, at Richmond, Winchester, and other points in Virginia; and the Eagle Oil Works, at Baltimore; and were conducted successively by Blaustein during the years from 1898 to 1906. The testimony of several witnesses for the Government was to the effect that each of these companies was used solely for the purpose of attacking genuine independent concerns.

The only witness called by the defendants with reference to these companies was Blaustein himself. He admitted that these companies operated under these names and were owned by the Standard Oil Company, and as we shall show later he practically admitted that he held them out as being independent of the Standard Oil Company or a trust, though in his testimony he sought to give a different meaning to these representations than the commonly accepted one. It is difficult to give the court an idea of Blaustein's character and his utter unreliability as a witness without a lengthy review of his testimony. Blaustein, according to his own testimony, is a Hebrew, born in Prussia, and he claims that he is the master of seven languages, but speaks English worse perhaps than any of the others. His testimony covers a wide field, and he seeks to give the impression that these various bogus companies were not run for the purpose of attacking independents. He offers various other explanations, but they are so fantastic and absurd that they can not be accepted as truthful. None of Blaustein's superior officers, who directed his operations, were called by the defendants to corroborate him.

EUREKA OIL COMPANY.

C. H. Mahle, who was employed in the office of the Standard at Baltimore as stenographer and later as assistant to the manager, testified that in 1897 and 1898 Blaustein operated the Eureka Oil Company at Norfolk, Va., and elsewhere, as a bogus independent concern; that this company obtained its oil from the Standard, but held itself out to be independent, and its effort was to turn the business of real independents into Standard channels. The oil was shipped to Blaustein in blank-head barrels, that is, barrels with no name upon them, while the practice of the Standard was to place its name plainly upon all barrels to its regular trade. Mahle says that Blaustein cut prices against the independent concerns and secured a large proportion of their business. (Mahle, vol. 5, pp. 2360–62.)

D. H. Farquharson, who was the agent of the Standard Oil Company at Norfolk at this time, testified regarding the circumstances under which the Eureka Oil Company started in

business at Norfolk. (Vol. 5, pp. 2211–12.) He said that there was at Norfolk at this time a peddler named Fivel selling oil to consumers, that the business had become of considerable importance, and that Fivel bought his supplies partly from the Standard. F. E. Powell, who was in charge of the refined oil department of the Baltimore division, told Farquharson that it was important not to let even their own customers get too large, and at his instance Farquharson tried to buy out Fivel, but could not do so. Farquharson says that Powell thereupon sent Blaustein to Norfolk to operate in the name of the Eureka Oil Company; that he was instructed to visit only Fivel's trade and not to visit the Standard's customers, and that he carried out these instructions. He said that Blaustein failed to destroy Fivel's trade in this way and then made an offer for his business and bought him out, and continued to operate for some time as the Eureka Oil Company.

Blaustein attempted to give a different complexion to this situation. He said (vol. 15, pp. 2434–39) that he was sent by Powell to investigate the conditions at Norfolk, Powell telling him that the Standard was having some trouble with its agent there and was losing business. He said that he went there; did not try at first to sell any oil, but talked with the dealers; that he found that Farquharson was not managing the business properly in that the Standard's tank wagon went to Portsmouth, an important suburb of Norfolk, only once a week, and in that the people were dissatisfied because the Standard employed colored drivers on its tank wagons, and also because it would not sell in less quantities than 20 gallons. He said that he did not know when he went there that Fivel was in business, but that Fivel learned from his customers that Blaustein was there, and himself immediately sought Blaustein and wanted to sell out his business. Blaustein said further that about a week later Powell sent him back to Norfolk to buy Fivel's business; that a deal was effected by which Fivel was to go on the route with Blaustein for a month; that Fivel suggested it would be desirable to run the company under a different name because the people were prejudiced against the Standard, and that Blaustein, happening to see the name "Eureka harness oil," thought Eureka would be a good name for his company. On cross-

examination he gave a different explanation (vol. 15, p. 2510), namely, that Fivel asked him to take another name because Fivel did not want his former customers to know he had sold to the Standard.

Blaustein said he learned that the Standard was dissatisfied with Farquharson's services and that he believed he was sent to Norfolk to wake Farquharson up, show him that he did not know how to market oil, in the anticipation that Farquharson would then quit, so that it would not be necessary to discharge him.

His testimony is not only directly contradicted by Farquharson's express statement that Blaustein operated the Eureka Oil Company against Fivel before he bought him out, but the claim that Blaustein was sent there to educate Farquharson or to show him that he did not know how to run the business is absurd. Farquharson had been employed by the Standard for many years. If the Standard officers at Baltimore did not approve of his employing negro drivers or of any other methods which he pursued, it would have been very easy to instruct him to change his methods. In fact, Blaustein said Powell did so instruct Farquharson after Blaustein had discovered these practices. (Vol. 12, p. 2438.) Moreover, Blaustein asserted during his examination that everybody in Norfolk knew that the Eureka was owned by the Standard, and it is difficult to see how, if that was the case, he expected to overcome the alleged dissatisfaction with the methods of the Standard by operating under the name of the Eureka. He did not deny that the Eureka was held out as an independent company, but only claimed that everybody knew that it belonged to the Standard. In this respect he is distinctly contradicted by Farquharson, who was on the ground at the time, as well as by Mahle, who knew the instructions from the Baltimore office under which Blaustein operated. If the defendants wished the court to believe this utterly improbable explanation of the purpose of operating the Eureka, they should at least have called Powell, who sent Blaustein to Norfolk, to corroborate him.

Farquharson testified further that shortly after Fivel's business at Norfolk was acquired, Blaustein went to Durham, N. C., which was in Farquharson's territory, and there

also operated under the name of Eureka Oil Company, holding himself out to be independent. He said that by a mistake the Standard Oil Company, in shipping from Baltimore certain stencils intended for Blaustein, sent them to the agent of the Standard Oil Company at Durham; that this became known so that the trade understood that the Eureka was controlled by the Standard, and that this disclosure had a very bad effect upon the Standard's trade and made the Eureka scheme unsuccessful. He said that Blaustein, in order to create the impression that he was independent, denounced Powell at one time at the Carolina Hotel in Durham, claiming that Powell was following him up and trying to destroy his trade. (Vol. 5, pp. 2212–15.)

Fehsenfeld, of the Red "C" Oil Company, said that the Eureka when at Durham had a list of the customers of the Red "C" Company there and visited these customers exclusively, and that it cut the prices to get their trade but failed because of the disclosure of the relation between the Eureka and the Standard. (Vol. 5, p. 2311.) This testimony is corroborated by Metzel, salesman of the Red "C" Company. (Vol. 5, p. 2414.)

Blaustein attempted to explain this situation (vol. 15, pp. 2439–42) by saying that he was sent to Durham to investigate conditions there and found that Griswold, the Standard's agent, was not getting trade in the suburbs of Durham because he refused to drive his wagon over the bad roads; that he also found that the Red "C" Company was getting business unfairly by representing that the red oil which it sold came from the ground red; and for these reasons he was sent there particularly to get the trade in these suburban points. Blaustein admitted substantially that the Eureka at Durham sought only business which had been supplied by independent concerns. This appears from his statement that the Eureka sold only in barrels and sought the trade in the outlying parts of the town and suburbs. The independent concerns, particularly the Red "C" Company, were selling in barrels, and as he stated were selling chiefly to this outlying trade.

Blaustein's claim that the Red "C" Company was holding out its red oil to be a natural product is absurd. Both Fehsenfeld and Metzel denied this and showed that their

circulars, widely distributed, plainly stated that the only difference between the red oil and the white oil was coloring matter. (Fehsenfeld, vol. 20, pp. 142–144; Metzel, vol. 20, p. 207.)

The Eureka Oil Company also operated in Burlington, N. C., and Greensboro, N. C. Fehsenfeld testified that at these places it cut prices and forced the Red "C" Company to withdraw. (Vol. 5, p. 2313.) Blaustein tried to give an explanation of the situation at Burlington, but his reasons are irrational, and his testimony is not convincing to any fair mind. (Vol. 15, pp. 2443–44.)

On cross-examination (vol. 15, pp. 2519–21) Blaustein could be made to give no positive or frank answer as to whether or not, when inquiry was made of him by the trade, he represented that the Eureka Oil Company was run by the Standard. An examination of his entire cross-examination will convince the court that Blaustein was very untruthful. His explanations are so absurd, he was so shifty in the position he took from time to time during the examination, and his answers were so persistently evasive that we refer only very briefly to his testimony, and do this only because the defendants relied on his testimony in the court below. The fact, however, that the Standard for many years employed in the field this person Blaustein to conduct various of its bogus companies throws light upon the extremities to which that company resorted in its attacks upon its weaker competitors.

ARGAND REFINING COMPANY.

About 1897 the Standard Oil Company bought out the Argand Refining Company, which had a refinery at Marietta, Ohio. (Vol. 17, p. 3337.) The refinery was closed; but it was doubtless because of its reputation as an independent establishment that the Standard soon after selected the name "Argand Refining Company" under which to do a bogus independent business at Richmond, Va. There appears to be no practical connection between the two concerns. (Vol. 15, pp. 2537–41.)

Blaustein testified (vol. 15, 2445–47) that in the latter part of 1898, under the direction of Powell, of the Baltimore office, he went to Richmond to investigate the conditions there.

He found that the special agent of the Standard, Mr. West, had caused dissatisfaction in the trade by employing colored drivers and by refusing to sell in less than 20-gallon lots (note that this is just what he says Farquharson did at Norfolk), and as a result of this prejudice the Southern Oil Company, an independent concern, was doing "a right smart business." Powell directed him to go to Richmond and operate under the name of the Argand Refining Company, for the purpose, Blaustein claimed, of waking up West and teaching him how to get the business. He admitted that after he had been operating the Argand Refining Company for some time the Southern did not have very much trade, and that the Argand had worked up a good business. In August, 1899, Blaustein, in the name of the Argand, bought out the Southern Oil Company, with money furnished by the Standard. (Vol. 15, pp. 2549–52.)

Blaustein said further that he did not confine the business of the Argand to seeking the trade of the Southern Oil Company, but solicited the trade of customers who were buying from the Standard as well (vol. 15, p. 2445); and that it never occurred to him that he was sent to Richmond to run out the Southern Oil Company. (Vol. 15, p. 2544.)

It requires little argument to show that this contention as to Blaustein's mission in Richmond is absurd. The absurdity of it appears especially in his statement that West did not know how to run the business and that he was sent there to instruct him. West had been with the Standard for many years. If the Standard officers were not satisfied with his methods it was easy to direct him to change them. Blaustein testified that because of the dissatisfaction West was later transferred from Richmond to some subordinate position in Baltimore, where he would be nearer the main office so that they could show him how to do business. He was asked whether West was not actually promoted, and said he did not know. Asked where West was after leaving Richmond, he said: "Some substation in Baltimore; I don't remember the place." (Vol. 15, p. 2545.) The fact of the matter is, as testified by another employee of the Standard in the Baltimore Division, that West was promoted from the position of special agent at Richmond to that of special agent at Baltimore, in charge of a much larger territory than

before, including the cities of Baltimore, Washington, and much of the States of Maryland and Virginia, with scores of substations under his direction. (Parsells, vol. 16, p. 2612; see also Petitioner's Exhibit 738, which is addressed to Mr. West as special agent of the Baltimore territory.) West was then and is now a far more trusted and prominent employee of the Standard than Blaustein, and it is not to be believed that Blaustein was sent to Richmond to teach him his business.

SOUTHERN OIL COMPANY.

After Blaustein, operating as the Argand Refining Company, had bought out the Southern Oil Company, in August, 1899, he discontinued operating as the Argand, took the name of the Southern Oil Company, and continued to operate it to some extent at Richmond, but principally in other places in Virginia. There was no independent concern remaining at Richmond, and Mahle testified (vol. 5, p. 2358) that immediately on the acquisition of the Southern the price of oil in tank wagons was advanced a cent a gallon at Richmond.

The Southern Oil Company was used especially as a means of attacking the business of Cooper Brothers, wholesale grocers, at Winchester, Va., who had an oil trade in that city locally and also shipped oil in barrels to various other places. L. F. Cooper testified that Cooper Brothers, prior to 1894 or 1895, had bought their oil from the Standard, but then commenced to buy from independent refiners. He says that Baughman, the Standard's manager in that territory, called on Cooper Brothers and said in substance that the Standard Oil Company owned the trade and was not going to let independent oil come in there. (Vol. 5, p. 2394.) Cooper said that when he first came to Winchester Blaustein told him that the Southern Oil Company was an independent company, with headquarters at Parkersburg, and that he was engaged in establishing a line of independent tanks between Parkersburg and Richmond; that he represented the largest independent company in the world. Blaustein tried to make arrangements with Cooper Brothers to use their tanks to store his oil, and said that if Cooper Brothers would handle his oil exclusively the Southern Oil Company would give

them a clear profit of a cent a gallon. When Cooper Brothers refused to enter into this agreement Blaustein said he would have to establish a station there, but that he did not like to do it, as the Coopers were independents like himself. (Vol. 5, p. 2393.) Blaustein started business accordingly, and Cooper testified that he made a special drive against the business of Cooper Brothers, and sold as much as 3 cents under Cooper Brothers' price. (Vol. 5, pp. 2392, 2396–7.) Mahle also testified that the Southern Oil Company attacked Cooper Brothers and cut prices. (Vol. 5, p. 2359.) The Standard Oil Company also cut prices at Winchester at this time, but not as much as the Southern Oil Company. The Southern Oil Company's price got so low that merchants would send in from other cities such as Chambersburg, Pa., and buy oil at Winchester and ship it back. (Cooper, vol. 5, pp. 2396–7.)

Cooper testified that Blaustein fairly swore that the Southern Oil Company was independent; that in talking to Cooper, Blaustein said the Standard Oil Company had treated him badly and was oppressive in all of its methods, and that it was hard for independent people to live. Cooper also said that Blaustein made the same statements to the trade generally. In his efforts to appear independent, Blaustein also falsely stated to the trade that Cooper Brothers were connected with the Standard and were not genuine independents. (Vol. 5, pp. 2395–2401.) The defendants' counsel asked Blaustein no questions regarding this testimony of Mr. Cooper.

The Southern Oil Company was not successful in destroying the business of Cooper Brothers, largely because that concern handled groceries generally as well as oil.

The Southern, however, also operated against the Red "C" Oil Company in the valley of Virginia. Mr. Fehsenfeld said that it cut the price so low that it netted only 3 cents per gallon for oil in barrels f. o. b. Baltimore, which was practically equivalent to giving the oil free, since the value of the barrel is equivalent to 2 or 3 cents per gallon. (Vol. 5, p. 2316.) Blaustein denied this statement.

In 1899, R. N. Greathead, traveling salesman for the Standard, stated to Metzel, salesman for the Red "C" Company, that his superior officer, Baughman, had written

him that the Southern Oil Company was independent of the Standard and had directed him to tell the trade so. (Vol. 5, p. 2407–8.) Metzel also testified that at one time, presumably when Blaustein was managing the Southern Oil Company, Blaustein stated in his presence that he was a refiner; that his principal business was handling lubricating oil; that the refined oil was simply a by-product, and it did not make any difference what he got for it. This assertion was utterly without foundation, as we shall show later, and was made to deceive the trade. (Vol. 5, pp. 2410–11.)

Blaustein's denial of the testimony regarding the attacks he made on Cooper Brothers and the Red "C" Oil Company is, in many points, qualified by such phrases as "I do not remember" doing thus and so. (Vol. 15, pp. 2473–76.) He denied having made the statements referred to by Metzel, in Metzel's presence or to anybody, but said he may have made the statement to somebody that he was independent (pp. 2477–78). His testimony as to how he held the Southern Oil Company out to the trade is very significant and shows how utterly untruthful and unreliable he is. The Government had introduced during the testimony of Cooper a postal card written by Blaustein (vol. 15, 2474), and addressed to J. D. Oglesbee, Waynesboro, Pa., signed "Southern Oil Company, P. Blaus." This postal card (Petitioner's Exhibit 758), after quoting prices on oil, ends with the statement: "We are strictly independent of trusts."

Blaustein's explanation of this statement, "We are strictly independent of trusts," is amusing, shows the character of the man, and indicates how little reliance can be put on his testimony generally. The substance of his explanation is that he meant that the Southern Oil Company was part of the Standard Oil Company; that he always considered it such, and when he spoke of the Southern Oil Company he meant the Standard Oil Company; that the Standard Oil Company was an independent concern, and that he did not understand that the Standard itself was a trust.

Blaustein's attention was called to a letter head of the Southern Oil Company which he had used (Petitioner's Exhibit 937), on which appears the following language: "Refiners of high-grade oils and petroleum products." He said he was told by the Standard to put this on his letter head;

admitted that the Southern Oil Company never had a refinery, and that while independent the Southern did not carry that statement on its letter head. He attempted to justify his use of that statement on the ground that the Standard had refineries, that the Southern was owned by the Standard, and therefore the Southern was a refiner. (Vol. 15, pp. 2578–80.) The manner in which the statement was used that the Southern Oil Company was a refiner, however, was clearly calculated to mislead and deceive the public with whom it dealt.

Blaustein's attention was also called to Petitioner's Exhibit 938, which purports to be a letter signed in typewriting, "Southern Oil Company." It is on the letter head of the Southern Oil Company, addressed to Cooper Brothers, under date of October 11, 1899, and contains the statement: "We regret very much that this has occurred, as you are independent oil dealers like ourselves, and we do not like to interfere with your business if we can help it." He said he did not remember whether he had written this letter, but that, if he did, "I simply meant that we are independent like him." (Vol. 15, p. 2584.)

These representations were also clearly intended to convey the meaning that the Southern Oil Company was independent of the Standard.

EAGLE OIL WORKS.

Early in 1901 Blaustein was transferred to Baltimore, and operated there under the name of the Eagle Oil Works, continuing to do so until 1905. This concern was held out to be independent of the Standard. Blaustein himself admitted that his prices were below the Standard Oil Company's regular market prices in Baltimore. (Vol. 15, p. 2465.) There is no denial that the Eagle Oil Company was throughout controlled by the Standard.

Fehsenfeld, of the Red "C" Oil Company, testified (vol. 5, pp. 2320–1) that when the Eagle started into business Blaustein attempted to hire away the tank-wagon drivers of the Red "C;" that the Eagle presented to customers as an argument to show that it was independent the fact that it cut the Standard's prices, and, on the other hand, claimed

that the fact that the real independents did not cut the price was proof that they were controlled by the Standard. Blaustein also circulated in the trade the false report that the plants of the Standard and Red "C" companies were connected by underground pipes.

Mahle, who was then in the office of the Standard, stated (vol. 5, pp. 2374–75) that the Standard employed men to follow the wagons of the independent concerns in Baltimore, especially those of the Crew-Levick Company, and get lists of their customers, which were turned over to Blaustein.

Mr. Wolff, Baltimore manager of the Crew-Levick Company, an independent concern, testified (vol. 20, pp. 71–2) that during 1904 the Eagle attacked the Crew-Levick Company's trade, cutting the price one-half cent a gallon; that the Crew-Levick Company had to meet this price, whereupon the Eagle went down a half cent farther, and so on, until finally the Eagle Oil Company was selling at 6 cents; that the Crew Levick Company did not meet this price, but sold at 7 cents, and that the Standard Oil Company's open price at the same time was 8 cents. Wolff said that he then went to the customers of the Crew-Levick Company and told them that he could could not go down any farther, but promised them that later, when the price would advance after the fight was over, he would make them a reduction on the then current price equal to that which Blaustein offered during the fight.

Warren S. Dixon testified that he was employed by Blaustein to work for the Eagle Oil Company in 1904 and 1905, driving a tank wagon; that Blaustein told him to go after the Crew-Levick Company's customers and offer a rebate of about one-half to three-fourths of a cent below the Standard's market price; that he was instructed not to sell to the Standard's trade except at the regular market price. He said Blaustein told him that the Eagle Oil Company was not controlled by the Standard, but that he showed him a list of Crew-Levick Company's customers and told him that he should not go to any trade in particular except that of Crew-Levick Company. (Vol. 20, pp. 193–4.)

Blaustein's evidence by no means wholly disagrees with the evidence of this witness. He said that when he first returned to Baltimore he investigated and found that about 90 per cent of the trade which he had formerly had there as an

agent for the Standard—namely, chiefly the trade with the foreign element—had gone over to the Crew-Levick and Red "C" companies, largely because these companies extended credits while the Standard did not. He said he suggested to Powell to let him start under a different name, and to extend credit to these people. He said that so far as possible the Eagle canvassed only the trade which he formerly had as agent for the Standard, which undoubtedly is true, because this particular trade had gone over to the Crew-Levick and Red "C" companies. (Vol. 15, pp. 2453–5.)

Blaustein admitted that he had sold oil for 6.5 cents, but said he had never sold it for 6 cents, as Fehsenfeld had testified. He claimed that the Standard's price at the same time was 7 cents. Whether this be true or not, it shows that the Eagle was cutting below the Standard's price. (Vol. 15, p. 2465.)

Blaustein further testified (vol. 15, p. 2481) that he did not remember of any case where the Eagle had cut the price of the Red "C" Company, except during 1904; that he would not say that the Eagle had not cut prices, but simply that he did not remember it. He tried to explain and justify the price cutting of the Eagle in 1904 by showing that about January 1, 1904, the Crew-Levick Company entered into a contract with a grocer named Crook to furnish him oil from January 1, 1904, to December 31, 1904, at reductions of from one-half to three-fourths of a cent below the regular tank-wagon price. It appears that Crook was a very large dealer, operating thirteen or more stores in Baltimore, and we submit that a special price of this sort to such a dealer is nothing remarkable, and in no way justified a general attack upon the trade of Crew-Levick Company with stores generally. Wolff testified (vol. 20, pp. 100–1) that Crew-Levick had previously sold Crook, and had given him a rebate, and that the Standard and Eagle also gave Crook rebates, because of his large trade.

The facts are perfectly clear from all this testimony that the Eagle Oil Works was used substantially only for the purpose of securing for the Standard trade which it could not otherwise secure, and of doing so by means of open and secret cuts in prices.

WILLIAM G. DAVIDSON, BALTIMORE.

It appears that the Standard operated still another bogus independent concern in Baltimore, under the name of the "Davidson Oil Company." William G. Davidson, up to 1904, had been the Baltimore manager of the Crew-Levick Company, an independent concern. He was discharged for unfaithfulness to the company (Wolff, vol. 20, pp. 99–100), and immediately started in business in his own name, having made an arrangement with Blaustein to buy oil from him at 1 cent below the regular market price. (Defendants' Exhibit 209; Blaustein, vol. 15, p. 2461.) Wolff, who succeeded Davidson as manager of the Crew-Levick Company, said that Davidson carried away the route books of that company, and in his new capacity solicited the trade of the Crew-Levick Company, representing himself to be independent; that he used a wagon which was painted in the same style as the Crew-Levick Company's wagons, but bore the name of Davidson. (Wolff, vol. 20, pp. 100, 101.)

Fehsenfeld testified that at this time the Standard's open market price was 8 cents; that the Eagle was selling to customers of the Crew-Levick Company and Red "C" Company at 6 or 6.5 cents, and that where the Eagle could not get the trade the Davidson wagon was going around and offering oil at 5 or 5.5 cents. This practice was finally broken up by the Crew-Levick and Red "C" companies, who advised the Standard's customers that if they would leave the Standard and buy from the independents, the Eagle would go around and offer them a lower price, and that the Davidson wagon would offer them a still lower price. This scheme convinced these customers that the Eagle and Davidson companies were bogus concerns, and so effectually disturbed the relations of the Standard with its regular trade that shortly thereafter the Davidson wagon was withdrawn, the Standard reduced its regular market price to 7 cents, and the Eagle advanced its price to 7 cents. (Fehsenfeld, vol. 5, pp. 2325–6.)

The only testimony which the defendants offered to contradict this evidence regarding the Davidson wagon was the statement of Blaustein that he could not see how Davidson could have sold at 5 or 5.5 cents, because the oil cost him

more than that. He also testified that Davidson was not under his (Blaustein's) control. (Vol. 15, pp. 2460–1.) This is no proof whatever that Davidson was not under control of the Standard, or that he did not sell at the prices claimed, by direction of the Standard. Wolff testified (vol. 20, p. 96) that Davidson told him he made his arrangements with Goodwillie, of the Standard, and the Standard doubtless made up his losses directly and not through Blaustein. Of course Davidson could not make a profit; that was not what he was operating for. Blaustein said that he did not know of any practice of the Davidson Oil Company to sell at 5 or 5.5 cents, but of course that proves nothing, for, as he claims, he was not directing the Davidson business, but merely selling him oil (vol. 15, p. 2461). Doubtless the arrangement that Davidson should buy from Blaustein's bogus independent concern was intended more effectively to conceal Davidson's relation to the Standard.

DIXIE OIL WORKS.

The Dixie Oil Company was organized as a corporation by the S. P. Shotter Company of Savannah, Ga., about 1897 or 1898. The Shotter Company had previously been engaged exclusively in the naval stores business, and had entered the petroleum business because the Standard was competing with it in naval stores. The Dixie Oil Company did business at Savannah, New Orleans, Mobile, Birmingham, and elsewhere. The Standard, according to the testimony of E. N. Wootten, who was then employed by the Standard, cut prices heavily against the Dixie and finally, about 1899, bought it out. Its name was changed to the Dixie Oil Works, and it was thereafter run by the Standard as a bogus independent concern, doing business in numerous places. (Wootten, vol. 5, pp. 2107–8; Finlayson, vol. 5, pp. 2279–80.)

C. T. Collings, vice-president of the Standard Oil Company of Kentucky, attempted to controvert Wootten's testimony as to price cutting against the Dixie during the period when it was actually independent. He said, in very general terms, that the decline in prices was due to the general decline in the market, but he did not quote the price of oil at any time or place during this period. Such general statements are no reply to Wootten's specific statements.

Wootten also testified that prices were advanced as soon as the Standard had bought up the Dixie, at least in New Orleans, with which place he was familiar because he was employed by the Dixie there after the Standard acquired it. (Vol. 5, p. 2107.) Collings sought to explain this advance by stating (vol. 12, pp. 904, 905) that the price of crude oil advanced at this time, which may be true; but it is not a sufficient answer in the absence of specific statistics showing that the advance in the price of refined was not relatively greater than in the price of crude.

H. G. Westcott, first vice-president of the Standard Oil Company of Kentucky, admitted that the Standard operated the Dixie Oil Works after it acquired the Dixie Oil Company, and that its ownership was kept a secret. He sought to give the impression that this was done only for the purpose of turning over the business of the original Dixie Oil Company to the Standard, but this explanation is refuted by the fact that the Dixie Oil Works operated at a great many places where the original Dixie Oil Company had never done business. (Vol. 2, pp. 725–7.)

There is, in fact, abundant evidence that the Dixie was used by the Standard simply as a means of attacking genuine independent concerns.

E. N. Wootten testified (vol. 5, pp. 2108–12) that he was sent by the Standard to New Orleans, about 1899, to take charge of the New Orleans branch of the Dixie Oil Works and to run it in the same manner as he had run the bogus independent People's Oil Company at Atlanta (see p. 553, *post*); that his letters to the Standard Oil Company (Cincinnati office) were not addressed to that company directly, but were addressed to the Dixie Oil Works at a certain post-office box in Cincinnati, and were received and replied to by Collings, Stanley, Holmes, and other officers of the Standard Oil Company of Kentucky. He stated that in New Orleans there were many customers who were dissatisfied with the Standard Oil Company; that the Dixie was instructed to make a special effort to get those customers, and, having acquired them, to switch their trade over to the Standard as soon as possible. When contracts were to be secured the Dixie and the Standard would both bid, sometimes the same prices, sometimes different prices, depending upon what seemed the

best method of ultimately getting the business into the hands of the Standard.

In the territory of the Baltimore marketing division of the Standard, which covers the South Atlantic States, the Dixie Oil Works was operated under the supervision of C. W. Bender. C. H. Mahle, who was in the Baltimore office of the Standard up to about 1903, testified that the accounts of the Dixie were kept in the books of the Standard in the name of C. W. Bender, agent; that Bender reported to the Standard Oil Company; that about 1901 he began to extend the business to towns in the Carolinas, Virginia, and Maryland; that the Dixie made a special effort at all competitive points to get business away from independent concerns; that it gave special commissions to distributing agents who had formerly handled independent goods, to get them to become its agents, and that it cut prices.

Mahle also said that while special efforts were made by the Dixie to get trade from the independent companies, now and then, for effect only, it would take a customer from the Standard. (Vol. 5, pp. 2363–4.)

W. H. Fehsenfeld, manager of the Red "C" Company, gave similar testimony. He said that the Dixie took away from the Red "C" its agents at Columbia, S. C., Marion, N. C., Newton, N. C., Charlottesville, Va., and Silver Spring, Md.; that it cut prices to take away the business from the Red "C," and after it had secured the business it so managed matters as ultimately to turn it over to the Standard Oil Company; and that it at all times held itself out to be independent. (Vol. 5, pp. 2317–19.)

Bruce Robinson, called by the defendants, testified that he was employed by Bender to act as agent for the Dixie Oil Works at Durham, N. C.; that he held the Dixie Oil Works out to be an independent company, and then believed it to be an independent company, and that Bender gave him to understand that it was, and that he never learned the contrary until later, when Bender introduced him to the Standard Oil Company's office people in Baltimore. (Vol. 13, pp. 1141–4.) We do not believe that Robinson was actually deceived, but this testimony shows plainly how the company was held out to the trade.

Metzel, salesman for the Red "C" Company, testified that in 1901 Hoffman, a traveling salesman for the Dixie, told him that he (Hoffman) had instructions from Bender to tell everybody that the Dixie was an independent company and that the Red "C" Oil Company was really controlled by the Standard; also that Bender had instructed him to sell oil wherever he could find a Red "C" customer, and that it did not make any difference at what price. (Vol. 5, p. 2408.)

Again, Samuel Cropman, who in certain territory went by the name of J. C. Knight, a salesman for the Dixie Oil Works, stated to a customer, in the presence of Metzel, that the Dixie was an independent company; that it had fought the Standard clear out of South Carolina; that it had a refinery at Savannah to which crude was shipped from Pennsylvania; that the Red "C" Company was a part of the Standard, there being underground pipes from the Standard's works in Canton, near Baltimore, to the Red "C" Company's works at Highlandtown, and that he had seen these pipes. All of these statements of Cropman were false. (Vol. 5, pp. 2409–2410.)

The evidence shows clearly that the Dixie was used particularly to get trade from the independent concerns. H. L. Finlayson, manager of the National Oil Company, of Norfolk, Va., an independent concern, testified that his company was attacked by the Standard, first through the Home Safety Oil Delivery (hereafter referred to), which sold to consumers, and soon after also by the Dixie Oil Works, which solicited the trade of retail dealers; that the Dixie avoided the customers of the Standard and solicited only the dealers who bought from the National; that it cut the prices, and in some cases would offer 5 gallons of oil free on a purchase of 25 gallons; that the Dixie tried to hire the drivers of the National Oil Company regardless of salary, telling them that a position with the Dixie would be more permanent as the National would soon be off the streets; and that the Dixie cut the price of lubricating oil against the National as much as 33⅓ per cent. (Finlayson, vol. 5, pp. 2275–80; see also Farquharson, vol. 5, pp. 2219–20.) These conditions continued from about 1901 to 1905, at which time Finlayson, accompanied by his attorney, Ex-Governor Aycock, of North

Carolina, had various interviews with Elliott, general attorney for the Standard Oil Company at 26 Broadway, New York, with Goodwillie, manager of the Baltimore Branch of the Standard, and with Cull, attorney for the Standard at Baltimore. They complained to these men of the operation of the Home Safety and Dixie companies against the National, and threatened suits. After these interviews the wagons of the Dixie were taken off the streets of Norfolk; the Standard put its name upon the Home Safety warehouse, and price conditions greatly improved. (Vol. 5, pp. 2281–4.)

C. H. Mahle, who had been employed by the Standard up to about 1903, in that year became the manager of the Richmond Oil Company, an independent company, which started in business at Richmond, Va. He testified that when the Richmond was about ready to commence business they found the Southern Oil Company there, which later took the name of the Dixie Oil Works. (Mahle covered a wide field in his testimony, and on this occasion undoubtedly used these names synonymously at that point. See vol. 5, p. 2359.) He stated that just before the Richmond Oil Company entered business the market price for bulk oil from tank wagon was 11.5 cents, and that the Southern (Dixie) cut the price to 6.5 cents; that the Dixie held itself out to be absolutely independent, and tried to convince the trade that the Richmond Oil Company was a Standard concern, pointing especially to the fact that Mahle had formerly worked for the Standard. He also said that the Dixie Oil Works had lists of the customers of the Richmond Oil Company and sought principally their trade. (Vol. 5, pp. 2369–74.)

L. Wilmer was the only witness called by the defendants to reply to this testimony about the Dixie. He worked for the Dixie at different times at Baltimore and Richmond, being, during an interval in such employment, engaged with the bogus independent Home Safety Oil Delivery at Norfolk, and after leaving the Dixie he went with the Standard. He testified that he did not know that the Dixie was controlled by the Standard (vol. 13, pp. 1258–59), though his own testimony shows that he suspected that it was. With his experience in the oil business, and with the fact that he was shifted from one of these companies to another and back again, he could not fail to know with certainty that the Dixie

was controlled by the Standard. He denied that the Dixie cut the price in Richmond, and said that his recollection was that Mahle cut the price, but was, however, quite indefinite about this cut. He also claimed that the Dixie, at Richmond, tried to get all the customers it could, including customers who had been buying from the Standard, and complained that Mahle got business away from him by telling customers that the Dixie was controlled by the Standard. This much is doubtless true, because Mahle himself had so testified.

Wilmer's testimony is not at all convincing; he had been trained in a school which was not likely to make him overtruthful. During his entire service for these bogus companies he was employed to live an untruth every day, and his testimony shows that he really believed he was working for the Standard while he was with the Dixie, and that he was evasive and deceptive in the manner in which he held the Dixie out to the trade. The testimony on this point is too lengthy to be quoted. It appears in volume 13, pages 1255–62.

As showing the unreliability of Wilmer's testimony, we call attention particularly to his self-contradiction in regard to the matter of payment of rebates by the Dixie Oil Works, at Richmond. On direct examination (vol. 13, p. 1248) he denied that he ever gave away oil or paid rebates. On cross-examination (vol. 13, p. 1271) he was asked whether he had made this statement on direct examination, and he said that he had, and that it was absolutely true. He was asked:

> Q. Did you ever allow it in any settlement that you made for your company, ever allow a rebate to a dealer?—A. Oh, no.

On further cross-examination he was asked if he knew certain dealers in Richmond, and whether he had not allowed rebates to them. He then admitted that he made contracts with those dealers by which they were to buy oil from him exclusively; that they paid the full price of the oil to the driver, and that he then paid back to them a certain amount which would make the net price covered by the contract; he did not remember how much was so paid back, but thought it was about half a cent per gallon. He also stated that he thought that the drivers of the Dixie Oil Works did not know

that he was making this arrangement. If this was not paying rebates, we do not know what that term means. We have shown in an earlier part of this brief that the Standard in many parts of the country paid rebates in just this way, and that such rebates were usually conditional upon exclusive purchase from the Standard, their very purpose being to hold the dealers and keep them from buying from independent concerns.

Metzel, salesman for the Red "C" Company, testified (vol. 5, p. 2409) that the Dixie, like other bogus independent companies, cut the price against the Red "C;" that the Dixie had sold oil as low as 6 cents when the regular market price was 4 or 5 cents higher. He said that he had seen a bill of the Dixie Oil Company at that price. He also testified (vol. 5, p. 2414) particularly as to attacks which the Dixie had made on the Red "C" in Montgomery County, Md., which adjoins the District of Columbia. He said it cut prices there and solicited only the business of the customers of the Red "C;" that after it got a customer if the salesman for the Red "C" continued to call upon him the Dixie would continue to sell him regularly, but if the salesman for the Red "C" ceased to call on him the Dixie would then neglect such customer and he would have to buy from the Standard.

The defendants sought by Wilmer to disprove this testimony. Counsel stated (vol. 13, p. 1250) that Metzel had testified that he had frequently come in contact with Wilmer and had discussed prices with him and asked Wilmer if this were true, and Wilmer said it was not. Metzel had testified to nothing of the sort, as appears clearly from the record, but had said that he did not know Wilmer. Counsel then stated that Metzel had testified that he had seen a bill of the Dixie Oil Company in Wilmer's territory, when Wilmer was handling the Dixie, showing oil at 6 cents per gallon, whereupon Wilmer denied that he had ever sold at that price. Metzel did not state that this occurred while Wilmer was handling the Dixie. Wilmer could not have known about all of the transactions of the Dixie. Part of the time while the Dixie was operating Wilmer was with the Home Safety Oil Delivery, at Norfolk, and part of the time with the Standard itself, and part of the time while he was with the Dixie his operations were confined to Richmond. The same criticism may

be made of his testimony (vol. 13, p. 1239) seeking to refute the statement of Fehsenfeld about the Dixie cutting prices against the Red "C" Company. Wilmer claimed that the Dixie maintained the market price, but even if that were true of the time he was conducting the business it would not necessarily be true at other times. The fact of the matter is, however, that Wilmer's testimony throughout bears every indication of unreliability.

That the Dixie Oil Works was used especially to attack independent concerns appears from the evidence of one of the defendants' own witnesses, Robinson. He testified (vol. 13, pp. 1139–44) that he was sent by Bender, manager of the Dixie, to Durham, N. C., to operate a tank wagon there; that he sought particularly the trade of customers who were buying in barrels, and succeeded in converting all of that barrel business to a tank-wagon business. The Standard was selling from tank wagons in Durham, and the Red "C" Company had been selling in barrels, and evidently this competition was directed solely against the Red "C," because Robinson admitted his customers were principally the Red "C" customers. He testified that he held out the Dixie to the trade as being independent, and believed that it was at that time.

Robinson, however, claimed that his prices while at Durham were the same as the Red C's and the Standard's; that the Dixie always maintained prices. (Vol. 13, p. 1110.) On rebuttal the Government called Fehsenfeld, president of the Red "C" Company, who testified (vol. 20, pp. 146–8) that through a personal visit to Durham at the time, and also from reports from his salesmen, he learned that the Dixie Oil Works sold at Durham at prices which were uniformly less than those of the Standard and Red "C." He produced tank-wagon tickets which he obtained at Durham, showing that in August, 1904, the Standard was selling there at 11.5 cents, and the Dixie Oil Works at 10.5 cents (Petitioner's Exhibits 948–51), and he stated that the Red "C" was selling there for 11.5 cents net. It is scarcely possible that, as Robinson admitted it did, the Dixie could have secured all the business away from the Red "C" without cutting prices, when the Standard could not do so at equal prices.

HOME SAFETY OIL DELIVERY, BALTIMORE, WASHINGTON, AND NORFOLK.

It appears that in the Baltimore territory, as in other territories, the Standard as one means of attacking independent concerns established in various cities a peddling business by means of which it sold oil to consumers, seeking particularly the trade of those consumers who were buying oil from grocers who handled independent goods. These peddling concerns here as elsewhere were held out as independent of the Standard. The principal evidence regarding these concerns in the Baltimore territory relates to Baltimore, Washington, and Norfolk, in all three of which cities the business was conducted under the name of "Home Safety Oil Delivery."

Mahle, who was in the office of the Standard at Baltimore at the time these Home Safety concerns started in business, testified that at all three points they were managed by C. W. Bender; were held out to be independent, and were used to hold the trade of grocers and peddlers so that they would not leave the Standard and purchase independent oil; that the Home Safety wagons were chiefly sent after the trade of dealers and peddlers who handled independent oil. (Vol. 5, pp. 2367–8.)

Finlayson, manager of the National Oil Company, an independent concern at Norfolk, testified that about 1901 his concern had five wagons selling oil to consumers, that the Standard had not up to that time sold to consumers, and only one other wagon (he thought) was doing so; that the Home Safety Oil Delivery then came in there; that a number of solicitors were put on the streets especially to solicit the business of consumers. (Vol. 5, pp. 2277–8.)

Bruce Robinson, who had been manager of the Home Safety business at Norfolk in 1902 and 1903, was called by the defendants. He testified that he did not even know that the Home Safety was controlled by the Standard, and that he held it out as independent. (Vol. 13, pp. 1116, 1130, 1143.) He stated (p. 1102) that it was not true that the Home Safety was sent there, as testified by Mahle, to be held as a club over other peddlers and prevent them from leaving the Standard, but on cross-examination when asked for what purpose the Home Safety was sent to Norfolk he

said he could not tell (vol. 13, p. 1150). Mahle, who testified that the Home Safety was used at all these cities in the Baltimore division for that purpose, was in the Standard Oil Company's Baltimore office and in direct contact with Bender, and was in a position to know the reasons for sending the Home Safety to Norfolk. If the defendants desired to contradict Mahle the proper person to call for that purpose was Bender, or some man in the Standard's office who knew about the relation of the Home Safety to the Standard at the time.

Robinson admitted that, aside from himself and the drivers of his wagons, Bender sent him four or five solicitors to canvass the trade. (Vol. 13, p. 1107.) There must have been something in the conditions at Norfolk to warrant such an unusual canvass. Robinson admitted that he succeeded in increasing the business of the Home Safety about fivefold. (Vol. 13, p. 1122.) He said, however, that he lost some business because his competitors cut the prices at Norfolk and that he did not meet such cuts but sold at prices publicly displayed. He could not remember what he paid for his oil or what he sold it for, and since his price, as he himself stated, was lowered and raised as Bender directed, he naturally knew nothing about the policy as regards meeting the prices of other concerns.

The cuts by competitors to which Robinson referred appear to be certain specific cuts. He gave a list showing the names of persons to whom he claimed the National Oil Company sold at less than his prices. These names and his description of the concerns on cross-examination show that they were large consumers, such as large fruit dealers who had a number of gasoline torches to light their stands by night, dyers and cleaners, who used gasoline in large quantities, restaurant keepers, etc. If the National sold to such concerns at less than the Home Safety was selling to ordinary consumers, it was but the natural price given to a large concern. The National was engaged in selling to retail oil merchants as well as to consumers and might naturally treat these large consumers as they did retail dealers.

Artie Purse, who managed the Home Safety at Norfolk, beginning in 1903, also claimed that the National Oil Company took away some of his customers by cutting prices,

but the concerns which he named were large consumers similar to those which Robinson named, and the explanation is doubtless the same in both cases. (Vol. 13, pp. 1283–87.) Purse claimed that he did not know at the time that the Home Safety was controlled by the Standard, but it is impossible to believe that a man of ordinary intelligence could have failed to know that fact while working for the Home Safety, especially in view of his previous experience with the bogus independent Paragon Oil Company at Seaford, Del. (See vol. 5, pp. 2356–57; vol. 13, pp. 1219, 1220, 1225.)

C. G. Purse was called on behalf of the defendants (vol. 13, pp. 1217–18) to reply to the testimony of Mahle that the Home Safety was used especially to get the trade of peddlers who did not purchase their oil from the Standard, and as a threat to the grocery trade to induce them to buy oil from the Standard. He said that at Baltimore and Washington the Home Safety under his management solicited trade from house to house irrespective of the question from whom the consumers were buying their oil. On rebuttal the Government called Warren S. Dixon, who testified (vol. 20, pp. 190–2) that prior to May, 1901, he was working at Baltimore for a peddler named Schmitz, who was buying his oil from the Red "C" Company; that about that time he entered the employment of Purse, who was managing the Home Safety at Baltimore; that under the direction of Purse he operated a wagon having no name upon it, and held himself out as being in business for himself; that under Purse's direction he went over the same route which he had previously covered for Schmitz and solicited Schmitz's trade alone, cutting the price about a cent a gallon, and that after he had been working thus for about six weeks Schmitz began purchasing his oil from the Eagle Oil Works (Blaustein's bogus concern, controlled by the Standard), and that Purse then directed him to leave Schmitz's trade and follow up the trade of Leo Blank, a peddler who was buying from the Red "C." He said that he got about half of Blank's trade by cutting prices, whereupon Blank also began to buy his oil from the Eagle, and that Dixon under Purse's direction stopped following his route. (See also Fehsenfeld's testimony, vol. 5, pp. 2320–21.) Dixon testified that after this Purse had him go on the route of a peddler named John Reuhl, who was also buying from the Red "C" Company.

This testimony squarely contradicts the testimony of Purse and completely corroborates the testimony of Mahle. It may be noted that Purse claimed (vol. 13, pp. 1223–26) that he did not know that the Home Safety was controlled by the Standard, but in view of the directions which he gave to Dixon regarding the manner in which he should conduct his business this testimony can scarcely be believed. It is the more improbable, because Purse admitted that when he was managing the Home Safety at Baltimore he made reports by mail which were addressed without any name, simply to 210 Lexington street, Baltimore, and that when he was operating the Home Safety in Washington he sent mail simply to 210 East Lexington street without name, or to a post-office box by number without name, using printed envelopes containing these addresses. (Vol. 13, pp. 1222, 1226, 1227.)

The Home Safety also operated at Washington, but it is unnecessary to go into the details of the evidence regarding its business at this point.

It is significant that some time in the latter part of 1905 or 1906, about the same time that the Dixie and the Eagle and other leading bogus independent concerns of the Standard were discontinued, the Standard began to put its name upon the cans used by the Home Safety and upon the warehouses of that company. This was after the Bureau of Corporations had begun its investigations of the Standard's business. Even if it were not for the direct testimony which we have presented showing how the Home Safety was used especially to attack the business of independent concerns, it would almost go without proof that the Standard could have had no other purpose in conducting its business in this way. The records of the Standard itself show that there was a large percentage of independent business at Baltimore, Washington, and Norfolk during this period, and it was beyond question to get this business back that the Standard employed these bogus independent concerns.

PEOPLE'S OIL COMPANY, ATLANTA, GA.

E. N. Wootten testified that for some time prior to 1898 the Commercial Oil Company and the People's Oil Company were independent concerns doing business at Atlanta; that the Standard so reduced the prices of oil that there was no

profit; and that the Commercial and the People's companies were forced to sell out to the Standard, which thereafter operated the business under the name of the People's Oil Company as a bogus independent concern. (Vol. 5, pp. 2094–99.)

After the People's Oil company became a bogus independent concern under the control of the Standard, Wootten was put in charge of it. He testified (vol. 5, pp. 2099–2103) that he reported to E. C. Kimball, cashier in the main office of the Standard of Kentucky, at Cincinnati, Ohio; that these letters were sent to a post-office box which was not the regular box of the Standard Oil Company; and that under instructions he held the People's out to the trade as an independent company.

Wootten said that after the purchase of the People's and the Commercial the price of oil in tank wagons in Atlanta advanced from 6.5 cents on January 1, 1898, to 13 cents in 1899. (See p. 482, *ante*, on the price situation at Atlanta.)

Collings, testifying for the defendants, gave (vol. 12, pp. 901–2) as a reason why the People's Oil Company was operated as an independent company that the Standard wanted to get the benefit of its established trade and brands; but it surely was scarcely necessary to run the business for seven years, as was actually done, for this purpose. The purpose was undoubtedly to maintain a show of competition when there was actually no competition.

In striking manner, indeed, are the crafty methods of the Standard shown in its use of two of its bogus independent companies to defeat an oil-inspection bill pending before the legislature of Georgia in 1899. And here it should be noted that the scheming, planning, and execution of the opposition to the bill was all done by officials high up in the councils of the Standard Oil Company, and in this instance at least the Standard can not escape responsibility by claiming it to have been the work of overzealous employees. The officials and regular attorneys of the Standard connected with this proceeding were C. T. Collings, then general manager of the Standard of Kentucky; W. E. Goodwillie, manager of the Baltimore division; E. R. Pugh, local manager in Georgia; and Mr. Cull, of Baltimore, and Mr. Spaulding, of Atlanta, attorneys regularly in the employ of the Standard.

The bill appears to have provided for a considerable increase of charges for the inspection of oil in Georgia, and was perhaps otherwise inimical to the interests of the Standard. These Standard officials and attorneys, or some of them, while appearing ostensibly to favor the passage of the bill, directed E. N. Wootten, manager of the People's Oil Company at Atlanta, and C. W. Bender, manager of the Dixie Oil Works, which was doing business at Savannah (both of them bogus independent concerns), to employ attorneys, and personally and by attorney to oppose the passage of this bill, using the argument that its provisions would be dangerous to the interests of the independent oil dealers in Georgia and would drive them out of business, leaving the Standard alone in the field. Under instructions Wootten in person actively opposed the bill, and also employed a firm of attorneys to do so whom he paid $500 of the Standard's funds for their services, which sum was duly allowed and approved in his expense accounts when submitted to the treasurer of the Standard, to whom he reported such matters. At the same time Bender, of the Dixie Oil Works, made speeches against the bill, and had with him an attorney from Savannah. A printed circular was gotten out and distributed by Wootten to members of the legislature containing arguments against the bill, the manuscript copy of which circular was furnished to Wootten by Mr. Cull, Baltimore attorney for the Standard. (See Petitioner's Exhibits 677 and 678.) By this manner of falsehood and misrepresentation to the legislature of Georgia the Standard Oil Company succeeded in defeating this bill, which was inimical to its interests, by having the objectionable features removed by amendment. (Wootten, vol. 5, pp. 2113–17.)

This evidence is entirely uncontradicted.

ALABAMA OIL COMPANY.

For some time prior to 1901 or 1902 the Alabama Oil Company was an independent concern, doing business in Birmingham, Ala. The Standard then leased it and ran it as a bogus independent concern for about five years. G. T. Wofford, who was assistant to the chief clerk and subsequently chief clerk of the Birmingham office of the Standard until some time in 1902, testified (vol. 5, pp. 2150–1) that the Alabama

Oil Company made its reports to G. B. Taylor, who was chief clerk to the treasurer of the Standard Oil Company of Kentucky at Cincinnati, addressing them to a post-office box without showing the name of the Standard Oil Company; and that the Alabama was expected to go principally after the trade which was prejudiced against the Standard.

E. L. Pauley, who was assistant special agent of the Standard at Birmingham from January, 1903, to July, 1905, and after that special agent, was called by the defendants and testified on this subject. He admitted that he knew nothing about how the Alabama Oil Company was actually managed, except that John W. Davis and Charles G. Davis, who had managed it while it was actually independent, continued to run it for the Standard Oil Company on a salary (vol. 12, p. 874) and held it out as being independent, denying that it was connected with the Standard when accused thereof. (Vol. 12, p. 860.) On his direct examination he said (p. 844) that about the latter part of 1903 or the forepart of 1904 the Alabama Oil Company began to hold itself out as agent for the Standard Oil Company; but on cross-examination (pp. 858–60) he admitted that this might have been in the latter part of 1905, which was at the time the Bureau of Corporations was making its investigations and about the time the Standard Oil Company admitted its ownership of many bogus independent concerns. He also admitted (vol. 12, p. 882) that all the Alabama did was to put over its door the words "Agent for the Standard Oil Company" in a circular form not over 8 inches long by 6 inches wide, whereas its own name was in a sign about 10 feet long. This certainly was not a very conspicuous way of announcing its relation to the Standard. Pauley claimed that about a year after this the lease of the Alabama expired and that it is now actually independent; but he admitted that it still bought its oil from the Standard and still had up the sign "Agent for the Standard Oil Company." (Vol. 12, p. 861.)

HAYNES PEDDLING WAGONS, COLUMBUS, OHIO.

Charles Kercher testified (vol. 6, pp. 2803–10) that prior to 1899 he was connected with the Paragon Oil Company, of Columbus, Ohio, a marketing concern which sold oil to consumers at Columbus, and at about twenty or twenty-five

other towns in Ohio and Kentucky. He stated (p. 2804) that up to 1896 this company bought its oil from the Standard, but it then began buying from independent concerns. Kercher was then in charge of the local business of the Paragon, at Columbus. Very soon after this change four or five peddling wagons appeared on the streets and sold oil to consumers for the same price at which the Paragon had formerly bought from the Standard at wholesale. These wagons were operated by a man named Haynes, and were held out by him and the drivers to be independent (p. 2805). When this competition began the Paragon had about thirteen wagons in Columbus, but it was forced to reduce the number to six, while the number of wagons operated by Haynes increased to seven (p. 2806). After about three months the Paragon resumed buying its oil from the Standard, and the wagons which had been put on the streets by Haynes gradually disappeared. Later the Paragon gradually dropped its business in all towns, leasing its wagons to the Standard and later selling them to that company (pp. 2807–10).

F. B. Squire, vice-president of the Standard Oil Company of Ohio, whose headquarters are at Cleveland, testified that he did not know of any such price war between the Standard and the Paragon as Kercher had described. (Vol. 13, p. 1534.) This is no denial of the specific testimony of Kercher, who was on the ground and in daily contact with the trade.

HOME SAFETY OIL COMPANY, TERRE HAUTE, IND.

John J. Shea, of the firm of O'Connell & Shea, at Terre Haute, testified (vol. 5, p. 2459) that his firm commenced peddling oil to consumers about 1892, and up to 1895 bought oil from the Standard. The Standard would not sell them in tank-car lots, so in 1895 O'Connell & Shea put up a storage tank and began buying in carload lots from an independent concern, and at a lower price than the Standard had charged. After a short time, in 1896, the Standard put two peddling wagons on the streets of Terre Haute (p. 2460) under the name of the Home Safety Oil Company, which held itself out as independent.

The men in charge of these wagons, before they started to sell oil, followed up the wagons of O'Connell & Shea, and got a list of their customers. They then began to peddle,

working only the trade of O'Connell & Shea (p. 2462). The wholesale price at which the Standard was selling to the retail dealers, and to certain peddlers in Terre Haute, was 8 cents a gallon. O'Connell & Shea and the peddlers who bought from the Standard had been selling to consumers at 15 cents (pp. 2461–62). The Home Safety offered oil at 8 cents a gallon, 5 gallons for 35 cents (pp. 2460–62). After this competition had continued for a short time the Standard offered O'Connell & Shea oil in tank cars at 3 cents less than the regular price charged to grocers (p. 2463), and promised that if they would buy from the Standard the Home Safety wagons would be taken off the streets. O'Connell & Shea accepted this offer, but the Standard later refused to carry out its promise and allowed them only 2 cents a gallon under the regular wholesale price instead of 3 cents. O'Connell & Shea then informed the Standard that they were going to buy from independent concerns (p. 2464), whereupon J. W. Fromeyer, the Standard's manager for the Indianapolis territory, told them that unless they bought from the Standard those peddling wagons would be put on again, and that they must buy from the Standard exclusively, Mr. Fromeyer saying: "We want the whole hog or none." (Vol. 5, p. 2465.)

HAMILTON OIL COMPANY, TERRE HAUTE, IND.

O'Connell & Shea, however, did begin buying from independents in 1897, and shortly afterwards a concern called the Hamilton Oil Company commenced peddling to consumers, representing itself to be independent and selling only or chiefly to the customers of O'Connell & Shea (p. 2465). It started selling to consumers at 8 cents a gallon, whereas O'Connell & Shea had been selling high-grade Pennsylvania oil at 15 cents, and other peddlers who handled the Standard's product also sold at 15 cents (p. 2468).

The grocery trade at Terre Haute complained that they could not make a profit because of the low price the Hamilton was charging, and at their request O'Connell & Shea went into a wholesale business also (p. 2468). They called their wholesale business by the name "Terre Haute Oil Company," and began selling Ohio oil to the grocers at 6.5 cents, the same price the Standard was charging for that grade of oil. Im-

mediately the Standard dropped its price to 5 cents wholesale, and the bogus Hamilton Company dropped its price to 6 cents retail. O'Connell & Shea did not meet these prices. At the same time the Standard was selling oil at Brazil, Ind., and Paris, Ill., points about 20 miles from Terre Haute and where there was no competition, at 3 cents over the Terre Haute price; and at some other towns in the vicinity named by the witness was charging as much as 11 or 11.5 cents. (Shea, vol. 5, pp. 2468–70.)

While the Hamilton Oil Company was thus operating in Terre Haute, it was under the charge first of D. Stimpson and later of John Maxon. John Maxon was also running a similar bogus independent concern called the Paragon Oil Company at Decatur, and another called the Banner Oil Company at Springfield, Ill. (Maxon, vol. 3, p. 1291; Kercher, vol. 6, p. 2813; Petitioner's Exhibit 771.)

KERCHER'S BOGUS CONCERNS AT TERRE HAUTE, DECATUR, AND SPRINGFIELD.

When the independent Paragon Oil Company of Columbus went out of business in 1899 (driven out by the sub rosa Haynes peddling wagons, see pp. 556–7, *ante*), Charles Kercher, who had been its superintendent at Columbus, entered the employ of the Standard Oil Company of Kentucky, and from that time to 1903 operated a number of bogus independent concerns in different parts of the territory of that company, and immediately took charge of the bogus independent peddling outfits which the Standard had been operating at Terre Haute, Decatur, and Springfield. He testified in detail as to how he managed them, and presented in evidence a large number of letters of instruction received from officials of the Standard at Cincinnati.

We shall review the situations at Terre Haute, Decatur, and Springfield under Kercher's management together because of their similarity, and because the communications which he received from the Standard officials frequently related to all three.

Petitioner's Exhibit 771 is the first of these letters, written by E. B. Stanley, under date of September 22, 1899, while Kercher was still with the Paragon Oil Company at Columbus. In this letter Stanley accepted Kercher's proposition

to enter the employment of the company; said he would like to have him take charge of the three concerns above named, at Terre Haute, Decatur, and Springfield, and added: "You understand perfectly how these companies are operated and I will not dwell on that." Kercher went to Cincinnati and had an interview with Collings, then general manager of the Standard of Kentucky, who instructed him to run these concerns as independent companies, and to seek especially the customers of O'Connell & Shea, at Terre Haute, of the Merchants Tank Line Company, at Decatur and Springfield, and of Solle Brothers, at Springfield. (Kercher, vol. 6, pp. 2811–12.)

Kercher also had a conference with John Maxon, and was introduced by Maxon to the drivers and other employees of these concerns at the various places (p. 2813).

Kercher testified (vol. 6, pp. 2815–33) separately with regard to his management of each of these three concerns, and the numerous letters which were introduced in evidence with his testimony refer to them sometimes separately and sometimes together. In brief, it may be said that he ran them for about three or four years, keeping the same names as at the start in Terre Haute and Decatur, but changing the name of the Springfield concern from Banner Oil Company to Kercher Brothers; that they were all run in substantially the same manner; that at each point special canvasses were made to ascertain what consumers were buying from the respective independent peddling concerns or from merchants who obtained oil from the independent dealers; that at each point Kercher's peddling concerns sought only the trade of these consumers; that they sold oil at an advance of from 1 cent to 2 cents above the wholesale price, which was an exceedingly narrow margin; and that they all lost money, which loss was adjusted by money sent to Kercher from the Cincinnati office of the Standard Oil Company. Kercher said that the Hamilton Oil Company, at Terre Haute, lost from $50 to $60 per week (vol. 6, p. 2817), and that the Banner Oil Company, at Springfield, lost about $40 per week (p. 2826).

These statements of Kercher, which we have summarized very briefly from his much fuller testimony covering each situation, are abundantly confirmed by the numerous letters

which he produced, and which had been sent to him in the regular course of business by officers of the Standard Oil Company at Cincinnati. These letters (Petitioner's Exhibits 771 to 798, inclusive) deserve the attention of the court. We can here cite only a few of the more significant features in them.

Petitioner's Exhibit 772 is a letter written to Kercher, signed C. T. Collings, by D. P. Sanford, under date of October 26, 1899, and reads, in part, as follows:

> DEAR SIR: In connection with the conversation we recently had in Terre Haute concerning the peddling situation there, we wish to impress upon your mind the importance of immediately making a canvass of the city and obtain a correct list of the names and the street numbers of all of O'Connell & Shea's customers. Also ascertain what dealers are selling O'Connell & Shea's oils and locate their customers, and as fast as you locate their customers have them put on your peddling list.

The letter then goes on to say that Kercher's drivers at Terre Haute—

> may retain what customers they have at present that are not strictly O'Connell & Shea's customers, but on all future business we wish you to confine their sales absolutely to O'Connell & Shea's trade, as this is the only sourse [source] from which we desire any increase, and they must not under any circumstances interfere with any of the store trade that are handling our oils.
>
> We are willing to allow credit sales to be made at our risk where you are absolutely positive that the sale is to one of O'Connell & Shea's customers. All other credit sales are at the driver's risk. * * *

A few days later E. B. Stanley, of the Standard Oil Company, at Cincinnati, wrote to Kercher along substantially the same line (Petitioner's Exhibit 773) saying, among other things:

> Do your drivers report to you each night the name and address of each customer of O'C. & S. called upon that day but not sold? This is important, as Mr. Jennings and yourself ought to follow this up immediately and make a personal call on these people and continue to do so until you have won them over. * * *

At the bottom of this letter appears the following sentence, in the handwriting of Mr. Stanley (vol. 6, p. 2826): "Better destroy this letter."

Petitioner's Exhibit 775, a letter from D. P. Sanford to Kercher, dated November 11, 1899, also shows that the business of the Hamilton Oil Company was to be confined, as far as possible, to O'Connell & Shea's customers. And the same is true of Petitioner's Exhibit 777, a letter from Sanford to Kercher, dated February 19, 1900, in which Sanford complains because the Hamilton Oil Company had sold to some consumers who had been buying from peddlers who handled the Standard's oil, and repeated that it was O'Connell & Shea's business that the Standard was after.

Other letters show that at Decatur the Paragon Oil Company was to attack the business of the independent concerns. Kercher testified (vol. 6, pp. 2832–3) that a peddler named Wagner was buying his oil from an independent concern, the Merchants' Oil Company, and selling it to consumers at Decatur, and that he was instructed especially to get the business away from Wagner, and also from grocers who were buying oil from the Merchants' Oil Company.

Petitioner's Exhibit 798 is a letter from Sanford to Kercher, dated January 6, 1900, in which, among other things, it is stated:

> We do not think it would be advisable at present to make any concessions in the way of prices, but would suggest your doubling Mr. Wagner's route so as to call twice as often as he is now doing on his customers. Also let us know at what prices Mr. Wagner is selling his oil.

Again, in Petitioner's Exhibit 790, a letter from Sanford to Kercher dated December 12, 1899, Sanford says:

> We are very anxious to have you go after all the Merchants' Oil Company's business that is in sight, but we wish to caution you to be as economical in getting this business as possible.

With reference to the situation at Springfield, where the Solle Brothers was one of the two independent concerns whose business was attacked, Kercher's testimony is confirmed by Petitioner's Exhibit 904, a letter from Sanford to Kercher, written some time in 1900, which says:

> Replying to your favor of the 16th, you may commence on Monday to make a price of 8 c. per gallon, on

> Prime White oil, at Springfield, Ill., and we trust that you will be able to secure considerable of Mr. Solle's trade by having the benefit of this low price.

A similar policy had been pursued at Springfield when John Maxon was manager of the Banner Oil Company, before Kercher took it up, as appears from Petitioner's Exhibit 788, a letter from Sanford to John Maxon, dated November 6, 1899. This letter refers to both Solle Brothers and the Merchants' Oil Company, and says in part:

> We would also like you to get a list of the stores that are now handling Merchants' Oil Company's oils; then ascertain who their customers are and where they live, and have your drivers make it a point to call on all of them, informing you of calls they make where they have been unable to make a sale. These you should follow up personally and use your best endeavors to win their trade.

These bogus independent concerns which Kercher was managing continued to operate up to the time he left the employ of the Standard, in the latter part of 1902. They were to a large extent successful in their purpose of getting trade away from the genuine independent concerns. Wagner, the peddler at Decatur, had to quit the business. In January, 1901, Sanford wrote to Kercher regarding the situation in Decatur (Petitioner's Exhibit 903):

> I would like to have you carefully look into this suggestion of discontinuing the business at Decatur and see if it is not practicable to make some such move. The loss at this point continues to increase, which would clearly indicate that the business is falling off and being taken care of by the stores and other peddlers. The situation at this point is greatly improved in some respects, so that it is not likely to be detrimental to our interests.

The improvement in the situation referred to was simply that the trade had largely been diverted into Standard channels.

At Springfield the Standard tried at different times to buy out Solle Brothers, negotiations being conducted by Kercher and not in the name of the Standard. At one time Sanford had authorized Kercher to pay as much as $1,400 for Solle Brothers' business. He failed at that time to buy it, but some time later Sanford wrote him to offer only $750; which shows how the business had been injured by the Standard's

tactics. (Kercher, vol. 6, pp. 2830–1; Petitioner's Exhibits 795–7.)

The Kercher correspondence introduced in evidence also shows the great secrecy which was maintained with regard to these concerns which he ran at Terre Haute, Decatur, and Springfield. Some of the letters were marked by the writer "Better destroy this letter." "Better destroy letter," etc. (Petitioner's Exhibits 773, 774, 788, 793.) Petitioner's Exhibit 898 is a letter from Maywood Maxon, then manager of the Standard's Decatur territory, to C. T. Collings, in which he says:

> It was my understanding that no one connected with this office was to know anything about the Paragon Oil Company, so I will suggest that all letters referring to their Mr. Kercher or John Maxon be sent under personal cover, as the general mail from your office is opened by Mr. Brown & Hinch. It will hurt us to have it known that the company own the Paragon Company. * * *

It will be noted that even the Standard's own employees were not to know about the control of these bogus independent concerns.

Most striking of all, however, as an evidence of secrecy, are the transactions with reference to S. H. Hults and J. R. Day at Terre Haute. Kercher testified that when he first started with the Hamilton Oil Company at Terre Haute, Hults and Day were peddlers, selling oil to consumers, and buying their supplies from the Terre Haute Oil Company, operated by O'Connell & Shea. They gave Kercher trouble by telling the trade that the Hamilton Oil Company was a part of the Standard. (Vol. 6, p. 2822.) Kercher accordingly entered into an arrangement with these two men, in his own name and not as representing the Standard, by which they were to sell oil nominally on their own individual account, but actually for the Hamilton Oil Company, and thus indirectly for the Standard. They were not to let it be known that they were working for the Hamilton (vol. 6, p. 2818). Petitioner's Exhibit 780 is a letter written by Sanford to Kercher, dated June 4, 1900, suggesting this secret employment of Hults and Day. In this letter Sanford says:

> * * * Of course you thoroughly understand that this is strictly a private and confidential deal between

the Hamilton Oil Company and these men, and I do not want you to make any mention of it to the Standard Oil Company's representative at Terre Haute. * * *

You can readily appreciate that by controlling these two peddlers there will be no further friction, and this will prevent prejudicial talk that they have used to your customers. * * *

Petitioner's Exhibit 782 also bears on the secrecy of the employment of Hults and Day.

Later Hults and Day quit working for the Hamilton and began peddling again on their own account, buying from the independent Terre Haute Oil Company, because they claimed they had discovered that the Hamilton Oil Company belonged to the Standard. (See Petitioner's Exhibit 783, a letter from Collings to Kercher, dated May 29, 1902.) On June 19, 1902, Collings wrote Kercher Petitioner's Exhibit 901 with reference to a proposition of Kercher to reemploy Hults and Day. In this letter he said:

> * * * We can not consider the proposition of allowing the peddlers you mention at Terre Haute $4 per day. Therefore there is nothing for you to do but to go ahead and put on your equipment and go after this business. *You can lower the retail price to 11 cents.*

This shows that pressure was brought to bear upon Hults and Day to come back to the Hamilton, by means of price cutting.

On July 30, 1902, the letter Petitioner's Exhibit 784 was written to Kercher, signed "C. T. Collings, H," with which was inclosed the letter Petitioner's Exhibit 785. (Kercher, vol. 6, p. 2823.) The first letter said:

> In accordance with your letter of the 29th I have written you a letter which you will find inclosed, and which I believe will enable you to settle matters with the peddlers, Hults and Day. The basis they demand is high, but I believe it is best on the whole, and in view of your recommendations I have agreed to the arrangement.

The letter inclosed therewith purports to be signed "J. G. Thatcher," and is dated at Columbus, Ohio. It was intended that this letter should be shown to Hults and Day by Kercher. Kercher did actually use it in that way, representing that it was a letter from the Paragon Oil Company, of Columbus, and that the Paragon was running the Hamilton Oil Company.

He succeeded in making new contracts with Hults and Day, which he signed in the name of the Paragon Oil Company, by which they were to work for two years at a salary of $3.50 per day. These contracts are Petitioner's Exhibits 786 and 787. (Kercher, vol. 6, pp. 2823–4.)

It will be remembered that the Paragon Oil Company, of Columbus, had gone out of existence prior to 1899. Both Collings (vol. 12, p. 978) and Kercher (vol. 6, p. 2824) said that they knew of no person by the name of J. G. Thatcher.

Mr. Collings claims that he knew nothing of these letters, Petitioner's Exhibits 784 and 785, but said that the signature "C. T. Collings" was affixed by one Hobbs, a stenographer in his office, and that he (Collings) was not familiar with the transaction (vol. 12, p. 977). Whether Collings personally knew about it or not, it is certainly a remarkable thing that the great Standard Oil Company should have considered it necessary to resort to a fraudulent device of this sort in order to get into their employment two peddlers of oil. If Collings actually knew nothing about it, that is an indication of his general unfamiliarity with this entire series of operations on the part of Kercher at all these towns and the consequent incompetency of his testimony on the subject.

It is significant that the defendants offered no evidence to contradict the testimony of Kercher with reference to these secret arrangements with Hults and Day.

Collings undertook to reply to some points in Kercher's testimony. We shall later consider certain general contentions which he made with reference to the purpose of operating bogus independent peddling concerns, and at present will call attention only to certain specific statements which he made regarding these concerns.

Before considering these statements we call the attention of the court to Collings's testimony (vol. 12, p. 945) when questioned as to the actual ownership and management of the bogus companies operated by Kercher, as follows:

> Q. And you owned the companies?
>
> A. Yes; as I told you those are details that I can't—it is so long ago, and these are details I had nothing to do with—I couldn't say positively one way or the other, because I wasn't in a position to have the details and the facts necessary to form an opinion even at that time.

Nearly all of the letters regarding these transactions, which were introduced by the Government, were signed by E. B. Stanley and D. P. Sanford. Neither Stanley nor Sanford was called to explain the details, although Stanley was in the court room while Collings was testifying (vol. 12, p. 996).

In the first place Collings asserted (vol. 12, pp. 922–3) that the Hamilton Oil Company at Terre Haute did not lose money, as Kercher had stated, that there never was a year when it did not make money, and some years it made over $2,500. Collings had at his command the books and records of the Standard Oil Company of Kentucky, which would have enabled him to corroborate his testimony, but he did not produce them, and although he was requested on cross-examination to do so (vol. 12, pp. 1065–6) he never complied. Kercher testified that the money to make up these losses was sent him by Taylor of the treasurer's office at Cincinnati. Why was not Taylor, or Holmes, the treasurer, called to testify, instead of Collings, who admitted (vol. 12, p. 969) that he paid very little attention to the business of these concerns? Kercher was on the ground and actually ran this company and knew in detail what he was testifying about.

Moreover one of the letters written to Kercher by Collings, in conjunction with Collings's own testimony in the present case, shows that the Hamilton Oil Company must have been operating at a heavy loss at least during the time referred to. Petitioner's Exhibit 899 is a letter from Collings to Kercher, dated May 5, 1902, in which he said: "I wired you to advance your price on gasoline at Terre Haute ½ ¢., which will give you a margin of 1½¢." This shows that Kercher had previously been marketing gasoline to consumers in Terre Haute on a margin of 1 cent, which means 1 cent above what he paid for the oil, to cover expenses and profit. Collings had testified (vol. 12, p. 889), "It has always been a kind of a general rule that if a peddler got 3 cents a gallon over the tank-wagon price—that is, the price at which the merchant bought his oil from our tank wagons—that he was getting a fair profit." He also stated that peddlers ordinarily got oil from the Standard's tanks for 1 cent less than the merchants, which would mean that a margin of 4 cents between the price they paid and their selling price would cover expenses of distribution and give a fair profit, according to Collings. This was

four times as much as the margin which Kercher was getting at this time on gasoline, and it may be assumed that the margin on oil was practically the same as on gasoline. This evidence corroborates Kercher and contradicts Collings.

Again, Collings testified (vol. 12, p. 924) that the peddling business at Springfield may have lost some money, but that it never lost $40 a week, as stated by Kercher, and he thought that afterwards it made a little money. Here again he produced no records to verify his statement, and we submit that Kercher's positive testimony is of more weight than such an indefinite statement, as Kercher conducted the business and was in a position to know the facts.

In this connection we call attention to the following extract from a letter written by Sanford to Kercher under date of January 16, 1901 (Petitioner's Exhibit 903):

> * * * I am very anxious that you make a special effort at Springfield and see if the situation at this point can not be vastly improved. Our cost of marketing at this point is very high at the present time, showing quite a heavy loss, and I believe it will be more to the general interest if hereafter you spend more of your time at each point instead of stopping only a short time at each place and moving about so frequently. * * *

We have already quoted an extract from this same letter with reference to the situation at Decatur in which Mr. Sanford says that the "loss at this point continues to increase."

Again, Collings attempted to deny the testimony of Kercher and Maywood Maxon, to the effect that, while the Paragon was operating at Decatur, Maxon employed five or six girls to go around from house to house and, under the pretense of instructing people how to take care of their lamps, ascertain which consumers were buying independent oil, and that this list was used by the Paragon in directing its sales. (Kercher, vol. 6, pp. 2831–2; Maxon, vol. 3, pp. 1291–2.) Collings said (vol. 12, p. 888):

> "My recollection is that at one time we were forced to put out some canvassers for the reason that the competitor had been circulating reports derogatory to the quality of our oil."

He also said that the competitors were trying to obtain a fancy price for what they called a fancy brand of oil, and for that purpose would go into a house and clean up a lamp and

show how brightly it burned; and that the Standard's canvassers were sent out to show the fallacy of this argument. Collings, however, testified on direct examination (vol. 12, p. 924) that the Paragon was operated because the peddler, Wagner, was making inroads into the trade of merchants who bought from the Standard. This admission, in conjunction with the positive testimony of Kercher and Maxon as to the object of the canvass, makes it difficult to accept Collings's explanations. The correspondence introduced in evidence contains clear and unmistakable proof that special canvasses were made at Terre Haute (Petitioner's Exhibits 773, 775, 776, 778, 779) and Springfield (Petitioner's Exhibit 788) to ascertain the customers of independent concerns. We have already shown that Kercher was instructed in writing to seek at Decatur especially the trade of Wagner and of consumers who were using oil furnished by the independent Merchants Oil Company, or the Merchants Tank Line Company, as it is sometimes called. In view of Collings's admission that he had very little to do with these concerns that Kercher managed, and in view of the fact that he usually prefaces his statements by the words, "my recollection is," or something to that effect, his testimony is of little value.

It appears by the testimony of Maxon that Charles Marshall succeeded Kercher in the management of the bogus independent concern at Springfield, and thereupon its name was changed to Springfield Oil Delivery. (Vol. 3, p. 1291.)

We have considered the situations at Terre Haute, Decatur, and Springfield together because of their similarity, both as to time and manner of business We shall now briefly mention certain other transactions of the Standard carried out through Kercher.

BOGUS CONCERNS AT VINCENNES, IND.

It appears from the testimony of R. T. Cooke, who was in the employ of the Standard Oil Company at the time in question, and by the testimony of Kercher (vol. 5, p. 2521; vol. 6, p. 2835) that about 1902 a man named Buck, at Vincennes, Ind., who had formerly been buying oil from the Standard and peddling it to consumers, together with certain representative merchants of that city, started the

Vincennes Oil Company, handling independent oil. Apparently this company sold to merchants and apparently also Buck continued to peddle to the consumers. The testimony is not entirely clear as to whether the Vincennes Oil Company did both branches of the business.

On July 3, 1902, Collings wrote to Robert Gunton, special agent of the Standard at Evansville, Ind., whose territory included Vincennes, regarding this situation. Petitioner's Exhibit 800 is a copy of this letter sent to Kercher, and is in part as follows:

> As you seem very emphatic on the subject of encouraging a peddler to go into Vincennes I would suggest that you communicate with Mr. Charles Kercher, Box 144, Terre Haute, Ind. He is operating at Terre Haute and one or two other places, and has a good equipment of peddling wagons, and knows just how to handle a proposition of this kind. My suggestion would be that you arrange to meet him at Vincennes. You will of course have to have this meeting in a way that no one will see you together.

Collings wrote Petitioner's Exhibit 799 to Kercher, inclosing Exhibit 800, and Kercher accordingly met Gunton at Terre Haute, and afterwards sent a peddler with a horse and wagon to Vincennes, who sought particularly the customers of Buck. For this purpose prices were cut to consumers. The Vincennes Oil Company did not meet this cut and Kercher's man succeeded in getting some of its business. (Kercher, vol. 6, pp. 2835–6.)

So far this is an ordinary case of a secret bogus independent company operating against the concern which handles independent oil; but the testimony of Cooke, showing the subsequent history of the Vincennes Oil Company, is a particularly striking illustration of the secret methods of the Standard. Cooke testified (vol. 5, p. 2521) that the Vincennes Oil Company was subsequently purchased by a person going by the name of "Niets," that "Niets" is Stein spelled backwards, and that this Stein was G. A. Stein, assistant treasurer of the Standard Oil Company of Kentucky. Stein ran the Vincennes Oil Company as a bogus independent after he had acquired it. H. G. Westcott, first vice-president of the Standard of Kentucky, testified that this was done only for a short time, long enough to enable the business

to be turned over to the Standard (vol. 2, pp. 721–2). Cooke had a conversation with Stein in Alabama in which Stein said: "If you ever run onto me in Vincennes I don't want you to recognize me," and told him that he was known there as "Niets." Subsequently Cooke saw an employee of the Standard take some mail from a post-office box at Cincinnati which was addressed to Niets and which had on the corner of the envelope the name "Vincennes Oil Company." This employee, a man named Baker, told him that Niets was the same as Stein. (Vol. 5, pp. 2521–22.)

It is certainly a striking thing that officers as high up in the councils of the Standard Oil Company as Gunton, Collings, and Stein should have descended to the level of having the assistant treasurer of the Standard Oil Company of Kentucky act under a false name in order to buy out and operate an independent concern.

Collings said (vol. 12, pp. 927, 980) he thought that Buck was operating both as a wholesaler and a retailer, and that it was the usual policy of the Standard to put in peddling wagons in such cases. Buck did not operate his retail business secretly as did the Standard; and it is perfectly obvious that the fact that he operated in both capacities, if such was the case, did not justify the Standard in resorting to such deceitful tactics. Here again Collings's testimony is qualified by the customary phrase that it is "my recollection."

CONSUMERS' OIL COMPANY, MACON, GA.

Kercher testified that in the latter part of 1901 Collings sent him to Macon, Ga., to buy out the oil business of a man named Flournoy, who had grocery stores and was also operating three or four wagons peddling oil to consumers. Flournoy had formerly bought his oil from the Standard, but was then buying from an independent concern. Kercher did not tell Flournoy that he was connected with the Standard; but with the Standard's money he succeeded in buying out the business for $1,450, and thereafter operated the wagons for a couple of years under the name of the Consumers' Oil Company, holding the business out to be independent. Kercher testified that, under the direction of Collings, he cut the retail price 5 cents a gallon. (Kercher, vol. 6, pp. 2836–8; see also Westcott, vol. 2, p. 725.)

Collings gave testimony on this subject (vol. 12, p. 927), qualifying it with such phrases as "nearly as I can remember" and "I think." He said among other things: "I think he (Flournoy) had just one wagon; it didn't amount to very much; very small." Kercher had testified that Flournoy had three or four wagons, and it can scarcely be believed that the Standard would have paid $1,450 for a single wagon and a business as small as Collings thinks this was. Westcott, first vice-president of the Standard of Kentucky, in his testimony given long before that of Collings, had stated that the Consumers' Oil Company consisted of several peddling wagons. (Vol. 2, p. 725.)

CAPITAL CITY OIL COMPANY AND DOMESTIC OIL COMPANY, INDIANAPOLIS.

R. T. Cooke testified that about 1901, when he was assistant to the manager at the Indianapolis office of the Standard Oil Company, the Capital City Oil Company, a peddling concern, began operations at Indianapolis, and sold oil for 2 or 3 cents less than the other peddlers, some of whom were buying independent oil; but that he (Cooke) did not know definitely whether the Standard owned it or not. A peddler named Kelly, who had apparently suffered from this competition, came to the office of the Standard and said that if it would take the Capital City away he would get the other peddlers who were buying independent oil back into line, and arrangements were made by which Kelly nominally bought the company out, the money being furnished him by the Standard. In other words, the Standard furnished the money to one man to buy another concern which the Standard apparently owned, the object evidently being secrecy. Cooke said that the men in the Standard's own office at Indianapolis did not know whether the Capital City Oil Company was independent or not; but Wilson, the manager of the Indianapolis office, later stated to Cooke that he was satisfied all the while that the "thing came from Kentucky and he was mighty glad to see it go home," evidently meaning that the Standard of Kentucky owned it. (Cooke, vol. 5, pp. 2510–12.)

The Domestic Oil Company did a peddling business in Indianapolis from 1903 to 1905. A man named Williams,

claiming that he was not connected with the Standard, came to the Indianapolis office of the Standard and bought from it certain tankage which formerly belonged to the Brooks Oil Company, which the Standard had previously bought. This tankage was used under the name of the Domestic Oil Company. Cooke was later informed by the chief clerk in the Memphis office of the Standard Oil Company that Williams was in the employ of the Standard when he came to Indianapolis, and that he was used frequently in transactions of that sort. The obvious purpose was to conceal from the Standard's own employees the fact that the Domestic Oil Company was a Standard concern. The Domestic Oil Company did a house to house business, selling oil in the patent one-gallon square cans. Cooke, who was with the Standard for many years, said he never knew of any company using this square can except those which were connected with the Standard. The Domestic is still doing business in Indianapolis, but some time in 1905 the Standard Oil Company's name was put upon its wagons. (Cooke, vol. 5, pp. 2512–15.) Collings admitted that it was all the time a Standard concern (vol. 12, pp. 917–18).

GENERAL REASONS GIVEN BY MR. COLLINGS FOR ESTABLISHING THE BOGUS PEDDLING CONCERNS.

The testimony which the Government introduced with regard to the bogus independent peddling concerns in the territory of the Standard Oil Company of Kentucky was entirely specific, relating to individual situations, some ten or eleven in number. Mr. Collings in his testimony sought to answer the Government's evidence chiefly by certain general statements purporting to give reasons why such bogus independent peddling concerns were established. He said that in some cases a certain reason existed and in other cases another reason, without saying specifically to what cases he referred. This, of course, is no reply to the Government's specific testimony. It was the duty of Mr. Collings, if he had facts to controvert the evidence as to the specific acts of these several individual peddling concerns, to present such facts in detail and specifically. Only as to two or three of the companies did he on his direct examination attempt to give specific testimony regarding the purpose for which they were

operated, and here a consideration of his testimony will show that it is misleading and unreliable.

The first reason given by Collings for operating these bogus independent peddling concerns was as follows (vol. 12, p. 886):

> It was done mainly because in those towns where we started, or were compelled to start, we were losing business, due to the fact that the peddler was selling trade that naturally should have been sold by our people, the people who bought of our tank wagons, the merchants.

We do not doubt that this is a correct explanation as to most of the cases; we have precisely shown that in several cases the object of the Standard in operating bogus independent peddling concerns was plainly to get back to the Standard trade which independents had got, or to discourage others from entering independent business. That of course is the purpose of all the Standard's unfair methods of competition. If Collings had stopped there the Government's case would have been unassailed, and it should be noted that he said "It was done mainly" for this reason. Later, however, under the leading of his counsel he mentioned other causes which he said were the principal reasons for operating bogus independent concerns.

Closely connected with the above, Collings testified (vol. 12, pp. 887–8):

> Q. Were there any cases where you put in peddling outfits where the peddlers were cutting the prices that had been established by the dealers to whom you sold, and in that way were taking away the dealer's business?—A. Yes; in nearly all those cases where we found that our merchant trade was losing business it was due to the other peddlers, who were handling the competing oil, selling it to the consumer at a less price than the dealer would sell at. * * * We had to sell oil through the same channels that they did; the same methods.

Here again Collings claimed that this reason applied in nearly all cases. This is wholly inconsistent with his statements hereafter mentioned, in which he speaks of other wholly different reasons as being usually the controlling ones.

Collings gave no specific instance in which peddlers handling independent oil had cut prices, and we know of none brought out in the testimony relating to any point in his territory. If there were any such instances, what was there to prevent the Standard from lowering its wholesale price to the merchants openly so that they could meet the competition of these peddlers? Collings testified (vol. 12, p. 889) that consumers as a rule preferred to buy of grocers rather than of peddlers. If that is true, the grocers surely must be able to protect their business against peddlers unless the Standard is charging them altogether excessive prices. Even if it were true that the peddlers handling independent oil had cut prices, it is obvious that the purpose of the Standard in employing bogus independent peddling outfits was to enable it to secure the particular trade which these independent peddlers were supplying without rendering it necessary to cut its prices to the trade in general. Surely such cutting of prices by independent peddlers, even if it existed at all, which we doubt, would not justify resort to trickery and deception.

For another reason, Collings said (vol. 12, pp. 886–7):

> In some cases the oil business and the gasoline business we found was being seriously hurt because of the excessively high retail prices of the dealers and also of the peddlers we were selling.

He said dealers could not be induced to reduce their prices, even though the Standard argued with them that they were losing business to the gas companies and electric-light companies. He referred to this as one of the "two controlling reasons" why the Standard started peddling outfits. It is certainly strange that the Standard Oil Company could find no other way of bringing about lower retail prices than by operating bogus independent concerns, going to the customer in disguise, and practicing all manner of deceit and falsehood. Moreover, if this explanation were true, these bogus independent concerns would naturally have sold oil to consumers who were buying from grocers and peddlers who handled the Standard's product, as they were the people whom Collings said the Standard was trying to educate. We have shown that instead of doing this the bogus independent concerns solicited only the consumers

who were not buying the Standard's product. Collings contradicts himself when he says in his direct testimony (vol. 12, p. 889):

> Q. And then when the peddler was put in there his efforts were directed to get the business of the consumer who was not buying Standard oil? That is true, is it not?—A. That is the primary object of putting them out.
>
> Q. The peddler was not supposed to canvass the trade of your wholesaler?—A. No.
>
> Q. Who was consuming Standard oil?—A. No, he was not.

This testimony was given as relating to these bogus independent concerns in general and not to any individual case.

The only specific places in which Collings claimed that retail dealers and peddlers were selling at excessively high prices when the Standard started its bogus independent concerns, were at Indianapolis and Terre Haute.

At Terre Haute it appears that O'Connell & Shea were selling independent oil to the consuming trade from wagons at 15 cents a gallon at a time when the wholesale price was 8 cents a gallon, and that peddlers who handled the Standard oil did the same. (Shea, vol. 5, p. 2462.) Collings said in his offhand manner (vol. 12, p. 923) that O'Connell & Shea were selling at 15 and 20 cents oil which cost them 5 and 6 cents, but he gave no definite evidence to show that they ever sold at 20 cents or ever bought at 5 cents or 6 cents; nor did he make any statement as to the prices which merchants who bought from the Standard were maintaining to consumers. He claimed, however, that the Hamilton Oil Company was put in there for the purpose of lowering the retail price. (Vol. 12, p. 923.) If this was the case why did it confine itself to the trade of O'Connell & Shea? as we have so conclusively shown that it did. If the object had been to reduce the retail prices generally, the Hamilton Oil Company would have solicited the trade of merchants and peddlers who handled Standard oil as much as or even more than it did the trade of the independents.

At Indianapolis, Collings claimed that when the Domestic Oil Company was started by the Standard in 1903 it was for the purpose of reducing the retail prices, and he said that

his recollection was that the Standard's price for Ohio oil to the peddlers at Indianapolis was 7 cents and for Pennsylvania oil 8 cents, but that the peddlers were selling at 15 and 20 cents, respectively. (Vol. 12, p. 917.) Collings's recollection should have been supported by records, at least to show what were the prices at which the Standard was selling. Petitioner's Exhibit 395, a record of prices furnished by the Standard, shows that in 1903 the Standard's prices at Indianapolis for Perfection oil (which is almost certainly Ohio oil) ranged from 8 to 10.5 cents, instead of 7 cents. It is not reasonable to believe that in a large city, with a large number of peddlers and retail dealers doing business and with a large proportion of independent oil being sold in competition with the Standard's product, there could have been a difference between the wholesale and the retail price of 8 cents a gallon on Ohio and Indiana oil and 12 cents a gallon on Pennsylvania oil, as Collings stated his recollection to be. We believe that the real purpose of the operation of the Domestic Oil Company is indicated by the large percentage of independent oil that was sold in Indianapolis and by the reduction of that percentage after the Domestic began operation. Petitioner's Exhibit 390, taken from the records of the Standard, shows that in 1902, before the Domestic started, independent concerns had 28.3 per cent of the refined oil business in Indianapolis. The Domestic appeared in 1903, and the competitors' business fell off to 19.8 per cent in 1905. The fact that the Domestic Oil Company was owned and controlled by the Standard became publicly known in 1905, and in 1906, doubtless as a result, the independents got 30.7 per cent of the business.

Collings, being asked whether there were other reasons for establishing bogus independent peddling concerns, said (vol. 12, p. 887):

> Yes, there were some instances that our wholesale competitor would start a peddling outfit in a name other than his own, or buy out some peddler that was already in business and run it under its old name. In some instances we put in a similar outfit.

He speaks of this as one of the two controlling reasons for their running the bogus peddling outfits. Each of Collings's

reasons appears to be a controlling reason when he is talking about it. He is here trying to give the impression that independent concerns in the oil business maintained bogus peddling outfits, holding them out as separate, and that the Standard Oil Company was justified in doing the same thing, or in fact was forced to do it.

Again Collings generalizes without giving specific instances. He does not here mention the case of O'Connell & Shea at Terre Haute, nor in his discussion of the Terre Haute situation did he speak of the fact that O'Connell & Shea did both a wholesale and a retail business as a reason why the Standard established the Hamilton Oil Company there. O'Connell & Shea did both a wholesale and a retail business, and there are several other instances where independent concerns have done the same; but O'Connell & Shea did not deceive as to the ownership of either branch of their business, nor is there any evidence that any other independent concern anywhere in the country ever did so. The two men, O'Connell and Shea, personally conducted both businesses; in fact they started the wholesale business after they had been for some time in the peddling business, and started it at the instance of the very men to whom they subsequently sold oil. It is true that Collings said with regard to the Vincennes situation (vol. 12, p. 927) that he thought the man there whom the Standard attacked with a bogus independent peddling wagon had been operating both as a wholesaler and as a retailer, but he did not state that there had been any concealment of the ownership of both concerns by the same interests, and there is no evidence whatever of any such concealment. In fact no reason can be conceived why an independent company should try to conceal its ownership of an affiliated business.

PEDDLING OUTFITS RUN BY C. M. LINES.

C. M. Lines testified (vol. 6, pp. 3201–6) regarding the system of bogus independent peddling concerns which he operated for the Standard Oil Company of Ohio from 1900 to about 1903. Lines had for years previously been employed by the Standard. He said that F. B. Squire, then vice-president of the Standard Oil Company of Ohio, told him about 1900 that he had some special and confidential

work to do which Mr. Lines must not tell even to his mother or to his wife. Under Squire's direction he went to Philadelphia and learned the method of peddling oil in the patent one-gallon square cans. These patent cans, as we have elsewhere stated, are used only by Standard concerns, and can be filled only by a patent device which the Standard controls. He then returned to Ohio and began operating this business under the name of Home Oil Company, but soon changed and operated it under his own personal name, C. M. Lines. He operated in Warren, Youngstown, Canton, Massillon, Mansfield, Newark, Ashtabula, and some other small towns in Ohio, continuing in charge of this business for about two years and a half. He held the business out as independent. Lines testified that it was run at a loss.

Petitioner's Exhibit 850 is a circular issued by Lines and distributed to the public at Youngstown. In this circular Lines replied to certain statements about him, which had been circulated by peddlers who handled independent oil. He said that the statement that he was selling oil below cost was false, and added:

> I am one of "the independent oil dealers" doing business on the theory of "live and let live," and giving the working people of this town a chance to buy oil and gasoline at a price which still leaves a small margin of profit.

As already stated Lines himself admitted in his testimony in this case that the prices at which he sold resulted in a loss, and this circular was false in that respect as well as in stating that Lines was an independent dealer.

George L. Lane testified before the Interstate Commerce Commission in 1906 (his testimony being read into this record by stipulation; vol. 3, pp. 1356–61) that he was employed by Lines at Youngstown and many other towns which he named, in Ohio; that his business was to drive out independent oil either by selling at low prices to the customers of merchants and peddlers who were buying independent oil or by inducing men who were peddling independent oil to enter Lines's employ; that in his fight against the independent peddlers at Youngstown, Lines sold for 2 cents and afterwards for 4 cents under the price charged by the independent peddlers; that Lines sold to consumers at the Standard's

wholesale price or less, and that several men were finally sent to give away oil free to the customers of Vahey, a peddler who the Standard was unsuccessful in its attempts to drive out of business. Other independent oil peddlers were also attacked. Boys on bicycles and men on foot were sent to follow up independent peddlers and learn who were their customers. The result was that all the independent peddlers except Vahey were driven out.

William Vahey gives testimony to similar effect (vol. 3, pp. 1366–7).

BOGUS PEDDLING CONCERNS AT CLEVELAND.

C. J. Castle testified (vol. 6, pp. 3054–56) that about 1902, at which time he was in the independent oil business at Cleveland, the Standard operated some peddling wagons in Cleveland known as Red Line wagons, which were managed by a man named Ryan, holding himself out as independent, and which sought the trade of peddlers who were purchasing independent oil.

About 1903 the Standard began operating in Cleveland with the square can, under the name of Cleveland Oil Delivery. M. F. Crawmer testified (vol. 6, pp. 3108–19) that he had previously worked for C. M. Lines at towns outside of Cleveland, and that about May, 1903, Lines put him in charge of the local business of the Cleveland Oil Delivery at Cleveland, Lines himself going away. Crawmer said he reported his business to a man named H. E. Cole at No. 53 Euclid avenue. No. 53 Euclid avenue is the Standard Oil Company's block, but Crawmer, who had lived in Cleveland many years, said he did not know that fact, and he had no means of knowing that Cole was connected with the Standard, and did not know that Lines had been working indirectly for the Standard. Crawmer was plainly an evasive witness. We do not believe that he was deceived as to the control of the Cleveland Oil Delivery by the Standard. He admitted that the typewritten communications he received from Cole were on plain paper and that he wrote and reported to Cole on plain paper, which was certainly suggestive of secrecy. He could hardly have failed to know that Cole was in the Standard Oil building. Crawmer claimed that he did not know whether the Cleveland Oil Delivery made a profit or not, although he had charge of the business.

F. B. Squire, vice-president of the Standard Oil Company of Ohio, called immediately after Crawmer left the stand, admitted that Cole was an employee of the Standard, and that the Standard controlled the Cleveland Oil Delivery while Crawner had charge of it. (Vol. 6, p. 3124.) When called on behalf of the defendants, however, Squire attempted to make it appear that the square-can peddling business was not run as a means of attacking independents. He said that about the time the business was started the Standard had reached a period in its history when it felt that possibly it might get nearer the consumer and save him money; that it was learned that retail dealers were making from 50 to 100 per cent on oil; that this scheme of the Standard required a great deal of care and caution so that the trade might not be antagonized (apparently Squire intended this to explain the secrecy); that therefore a few towns were selected in which to make the experiment, but that the whole thing finally proved a failure and was gradually abandoned. (Vol. 13, pp. 1523–25.) We have already shown what an unreliable witness Mr. Squire is; that, despite his high position, he claimed that he did not know the Standard Oil Company of New Jersey controlled such well-known Standard concerns as the Union Tank Line, the Solar Refining Company, etc. We shall later point out other evidence of his untrustworthiness. (See pp. 584–5, *post.*)

We do not believe that the Standard entered upon this business in the Cleveland territory as a mere experiment in getting nearer to the consumer; it already had much experience with the square-can business and with other retailing methods, at New York, Boston, Philadelphia, and elsewhere. (See testimony of Lines, vol. 6, pp. 3201, 3206; King, vol. 3, pp. 1507–10.) When it started with the square-can business in Cleveland it had already had the benefit of about two years' experience in the operation of the Lines wagons outside of Cleveland, and Lines said that the business had been conducted at a loss. In view of the testimony of Castle, Lane and Vahey there appears no doubt that these peddling outfits were used primarily to attack the business of independent concerns.

The reason why the peddling outfits were started by the Standard at Cleveland is evidently the fact, testified to by

Castle (vol. 6, pp. 3054, 3056), that there had been a very large number of peddlers operating in Cleveland, and the fact that there was a large volume of independent business there. Castle stated that as a result of the competition of the Cleveland Oil Delivery and the Red Line wagons which preceded it, the number of peddlers was reduced from about 250 to about 50. Squire seeks to explain the decline in the number of peddlers by the increasing consumption of natural gas at Cleveland (vol. 13, pp. 1531–32) and gives some statistics of the number of natural gas meters in use; but he fails to give the only statistics which would really be significant, namely, the quantity of oil sold, of which he must have a very accurate record both for the Standard's sales and for those of independent concerns.

BOGUS INDEPENDENT PEDDLING OUTFIT AT OBERLIN, OHIO.

The New American Oil Company during the nineties was an independent concern with headquarters at Mansfield, Ohio, selling oil at various places in Ohio. It was owned by W. W. Stark and Peter Scholl. One instance is given of an attack which the Standard made upon the business of this concern. The New American was selling oil at Oberlin, Ohio, especially to a concern called Behr Brothers. C. J. Castle, who was then working for the Standard, testified (vol. 6, pp. 3035–7) that other means had been tried to get this business, without success, whereupon he made an arrangement with a merchant named Morgan to put on a peddler and sell oil at retail from a wagon especially to the customers of Behr Brothers; that this peddler held himself out as independent and sold oil at a cut price, and that this continued for about a year and until the New American Oil Company was bought up by the Standard.

Squire (vol. 13, p. 1517) when asked whether this peddler had been started as Castle had testified, said, "Not to my knowledge," and that it could "hardly" be done without his knowledge. This is no denial of Castle's specific testimony.

NEW AMERICAN OIL COMPANY.

About 1896 or 1897 the Standard bought out the New American Oil Company, and thereafter, for four or five years, continued to operate it under the same name, under the man-

agement of W. W. Stark, one of the former owners. (Squire, vol. 13, p. 1520.) Castle, who was then employed by the Standard to handle competitive conditions, testified (vol. 6, pp. 3046–7) that among other places where it did business, the New American, after the Standard acquired it, had a tank station at Canton, and that it there sold both at wholesale and retail, and that it sought especially the trade which was buying the oil of the Freedom Oil Works; that the New American held itself out as independent and got its oil from the Standard in blank-head barrels.

Petitioner's Exhibit 832 is a letter which Stark wrote to Hoag, manager of the Standard's Cleveland station, October 20, 1897, in which Stark complains of the policy of the Standard in requiring him to slight the trade after the New American had taken the business away from competing concerns. He says, in part:

> To my mind it is a mistaken policy for us to put forth extraordinary effort to secure competition trade, often at no little expense, and then as soon as we have it well in hand turn it over to other parties without any apparent excuse. It makes it so plain to the parties we get in line that we have served our purpose when we secure their business that we can never hope to go after them again with any hope of success.
>
> You say it seems to you that we should make an effort to turn this business over to your company, but you suggest no method, except that we advance the price to them. Since there has been no advance in the oil market, it would be a most transparent thing for us to do to advance the Ashland price to the Heltmans.

This letter shows plainly what the policy of the Standard was in operating the New American.

Squire (vol. 13, p. 1520) claimed that the New American was operated by the Standard merely to take advantage of the good will that it had, and only as long as it could be operated profitably, and that it sought chiefly the barrel trade. We have little doubt that the latter point is true, for independent concerns largely do business in barrels. It is difficult to see why the Standard should have continued to operate this company for four or five years merely to take advantage of its good will, and the statements of Castle and the correspondence of Stark with Hoag (see Petitioner's Exhibits 831, 832, 833, and 834, letters from Stark to Hoag)

show clearly that this was not the purpose, and that the New American was used to attack the trade of independent concerns.

TOLEDO OIL WORKS.

Castle, who was in the employ of the Standard in Cleveland at the time in question, testified (vol. 6, pp. 3052–4) that the Toledo Oil Works was organized as an independent concern at Toledo, but before it commenced doing business the Standard took it over, and thereafter ran it under the name Toledo Oil Works, holding it out as independent; that it sold oil chiefly in barrels and sought only the trade which was handling independent oil; that it was not the policy of the Standard to expect a profit from this class of companies; that they were understood "to be a sort of war department; simply had a reserve; did not have to make any money; just kill the other fellow." The Toledo Oil Works did business in various places.

Squire said, with reference to the Toledo Oil Works and the New American, that they were not established by the Standard for the purpose of meeting competition, but were acquired by purchase after they had been established, and that the Standard felt that if there was any good will possessed by such concerns the Standard was entitled to it.

> Q. As I understand you, they (referring to both concerns) were maintained by you because for the time being you thought there was money in maintaining them and conducting them?—A. We did. (Vol. 13, p. 1522.)

This testimony again shows the unreliability of Squire. Castle testified that the Standard acquired the Toledo Oil Works before it was actually in operation; so that it could have had no good will, and Squire does not specifically deny this fact. As to his contention that the Toledo Oil Works was run because they thought there was money in maintaining and conducting it, we have a complete refutation in Petitioner's Exhibit 275, which is a transcript of entries in the balance sheets of the Standard Oil Company of Ohio, covering the period from 1902 (when the entries first appear) to June 30, 1905 (when they cease), and which was furnished by C. G. Fay, assistant comptroller of the Standard Oil Company of New Jersey. This exhibit shows that the To-

ledo Oil Works was operated each year at a loss, the amounts being as follows:

Year ending December 31, 1902	$5,467.66
Year ending December 31, 1903	9,680.18
Year ending December 31, 1904	10,349.81
Half year ending June 30, 1905 (Toledo Oil Works closed early in this year)	734.48
Total loss, account Toledo Oil Works	26,232.13

The most charitable view that can be taken of Squire's testimony upon this subject is that he had no knowledge whatever. This complete contradiction of Squire on this point ought to condemn his entire testimony except where he is corroborated by credible evidence from other sources.

REPUBLIC OIL COMPANY.

The most extensive bogus independent concern ever operated by the Standard was the Republic Oil Company. Prior to 1901, Scofield, Shurmer & Teagle had a refinery at Cleveland and were doing a large business, by tank wagon and otherwise, in Ohio, Michigan, Indiana, Illinois, Iowa, Kansas, Missouri, Nebraska, and other States, having numerous stations. The firm was an old, active and aggressive competitor of the Standard. In the spring of 1901 the Standard bought it out and put the property in the name of the Republic Oil Company, all the stock of which it held and continued to hold until 1906, when the company went out of business. (See Petitioner's Exhibits 4 to 9, inclusive.)

During all these years the Republic Oil Company was held out to the trade as an independent concern. Various agents of the company and competitors so testified in the Missouri case, the evidence being read into the record in this case. (See Teagle, vol. 3, p. 1154; Jockel, vol. 3, p. 1064; Wilhoit, vol. 3, pp. 1033–4; Shiers, vol. 2, p. 983; Grace, vol. 2, p. 998; Gardner, vol. 2, p. 946, and other witnesses.) The Republic Oil Company placed on its letterheads the words, "Successor to Scofield, Shurmer & Teagle." (Turrell, vol. 3, pp. 1053–4.)

On June 12, 1901, the following circular letter was sent out by W. C. Teagle, manager of the Republic Oil Company, to the agents of the Republic generally (vol. 3, p. 1053; also see testimony of Teagle, vol. 3, p. 1155):

GENTLEMEN: Enclosed we attach a typewritten letter which we have been sending to some of the trade who

have written us relative to newspaper reports, etc., that have appeared in the papers stating that we had sold out to the Standard Oil Company. If you think it necessary to send out a letter of this kind to the trade from your station please do so. We leave this matter entirely to your own judgment, as you are better in touch with the feelings of your customers than we are. We believe the less said about the new concern the better. We simply consider the Republic Oil Company as a change in the name of the firm of S. S. & T., and that the business will be run along the same lines as in the past.

Yours truly,

REPUBLIC OIL CO.
W. C. T.

The circular inclosed in the above-quoted letter was as follows (vol. 3, p. 1054):

GENTLEMEN: You have undoubtedly seen reports in the papers that Scofield, Shurmer & Teagle and the Cleveland Refining Company had sold out to the Standard Oil Company. These reports were not true. The business of Scofield, Shurmer & Teagle and the Cleveland Refining Company has been consolidated, and will be continued under the name of the Republic Oil Company. The management of the business remains practically the same, and the general policy will be unchanged. On behalf of the above-named concerns we desire to thank you for past favors and to solicit a continuance of your valued patronage, which will at all times have our prompt and careful attention.

Yours, very truly,

_____ _____.

The Republic Oil Company sent out monthly price lists, which were headed at the top, "No trust, no monopoly; absolutely independent." These were liberally distributed to the trade. (Cooke, vol. 5, p. 2519.)

Hardcastle, who was put by the Standard in charge of the bookkeeping of the Republic Oil Company, at Cleveland, testified that W. H. Tilford, a director of the Standard Oil Company of New Jersey, instructed him that he was not to let it be known that he had been connected with the Standard Oil Company. Hardcastle said that the managers of the different stations of the Republic were instructed to hold out that company as entirely independent of the Standard. (Vol. 3, p. 1064.) There is, in fact, no contra-

diction of the testimony of the numerous witnesses who stated that the Republic was so held out.

The Republic not merely sought to retain the trade of Scofield, Shurmer & Teagle but was also used by the Standard to attack genuine independent concerns. It cut the price against such competitors; it sought their customers without trying to sell to the customers of the Standard; it gave rebates and special commissions to dealers who were buying from independent concerns, and adopted all the usual methods of bogus independent concerns to kill out competition. It thus saved the Standard Oil Company the necessity of openly cutting prices. (Gardner, vol. 2, p. 946; Shiers, vol. 2, p. 983; Grace, vol. 2, p. 998; Wilhoit, vol. 3, p. 1034; Steigerwald, vol. 3, pp. 1042–4; Turrell, vol. 3, p. 1052; Shea, vol. 5, pp. 2471–2.)

It is unnecessary to go into the details of this evidence, for there is substantially no specific testimony to controvert the statements of these witnesses as to what the Republic Oil Company did. To be sure, Teagle, the manager of the Republic, and Nichols, its president, and some employees of the Waters-Pierce Oil Company and the Standard, testified that the Republic continued to compete against the Standard Oil Company and the Waters-Pierce Oil Company, as well as against independent concerns, and also contended that the object in continuing the business under the name of the Republic Oil Company was merely to take advantage of the brands and good will of the firm of Scofield, Shurmer & Teagle. There is no doubt that the latter was one object to be sought, and beyond question, in seeking to keep up the trade which Scofield, Shurmer & Teagle had, oil would naturally be sold in some cases to customers of the Standard. The employees of the Waters-Pierce and the Standard did not generally know that the Republic was controlled by the Standard and naturally would assume that it was a competitor. The mere purpose of maintaining a show of independence would also compel the Republic to sell oil to some extent to the Standard's customers. It is absurd, however, to suppose that the Standard, which owned every dollar of the stock of the Republic Oil Company, and which owned all the stock of the Standard Oil Company of Indiana, operating in the same territory as the Republic, and which held a

majority of the stock of and controlled the Waters-Pierce Oil Company, in whose territory the Republic also sold oil, could compete with itself in any bona fide manner. That would have been a wasteful and absurd method of conducting business. What competition there was between the Republic and the other Standard concerns was necessarily either a blind or merely an unavoidable incident of the competition of the Republic against the independent concerns. The detailed evidence of numerous witnesses that the Republic made special attacks upon the business of such independent concerns is in no way refuted by such general testimony as this.

We wish to emphasize that this was the largest and most important of all the bogus independent companies operated by the Standard and was a more powerful instrument for getting business away from the genuine independents than any other of the bogus independent companies. The records of the Standard Oil Company introduced in evidence (Petitioner's Exhibit 396) show that in 1902 the Republic Oil Company sold 330,466 barrels of petroleum products; in 1903, 380,038 barrels; in 1904, 312,724; and in 1905, 305,590 barrels. This is vastly more oil than is sold by any independent concern, with perhaps one or two exceptions. The total sales by independent concerns of refined oil and naphtha, the two principal products, as reported by the Standard (Petitioner's Exhibits 387–A and B) are only about 2,225,000 or 2,500,000 barrels per year.

During most of the time the Standard's statistical department did not use the name Republic Oil Company in referring to this concern's business, but called it "Western Special."

This company was one of the defendants in *State of Missouri* v. *Standard Oil Co. et al.* (218 Mo., 1), in which action the Standard of Indiana, Waters Pierce and Republic companies were ousted from the right to do business in Missouri, for the practices they pursued (among others) stated in this brief.

The secrecy of the Republic Oil Company's relation to the Standard combination was maintained until the beginning of the Missouri litigation and the investigations by the Bureau of Corporations. When the truth could no longer be concealed the Republic had outlived its usefulness, and in 1905 its business was closed up and it went out of existence.

REPORTS OF COMPETITORS' SHIPMENTS AND BUSINESS.

It is alleged in the petition (vol. A, p. 107) that in furtherance of its methods of unfair competition the defendants have obtained from railroad employees and others full reports of the shipments and business of their competitors and that these reports are used by the defendants to enable them to carry on an unjust and unlawful competition against independent refiners and dealers. These allegations are denied in the answer (vol. A, p. 433), except that the defendants aver that the Standard Oil Company has obtained in proper and legitimate ways information as to the movement of petroleum and its products over some of the railroads and has used such information legitimately in its business.

It appears clearly from the evidence that the Standard Oil Company has an elaborate and wide-reaching system of obtaining information regarding the shipments and business of competitors, and does obtain this information in illegitimate ways and use it for illegitimate objects.

THE STANDARD'S "STATISTICAL DEPARTMENT."

It appears from the evidence that the Standard Oil Company has a general statistical department with headquarters at 26 Broadway, one of the chief functions of which is to keep accurate records of the volume of business done by competitors, and that the information regarding shipments and business of competitors, secured from railway sources, is all reported ultimately to this central office. The Government had much difficulty in securing from the officers of the Standard Oil Company an admission even of the existence of this statistical department and of the fact that such records of the business of competitors were kept. Two or three witnesses who had charge at New York of the sales of the various Standard marketing companies in different parts of the country admitted after much questioning that, from the central offices of those companies in other places, reports of competitive shipments were sent to them at New York; but

they at first denied knowledge as to what became of such reports after they had once examined them. (McNall, vol. 2, pp. 670 et seq.; H. M. Tilford, vol. 2, p. 681.) Thus H. M. Tilford, who had charge of the sales in the Waters-Pierce territory until 1900, and later had charge of the sales in the territory of the Continental Oil Company and the Standard of Iowa, admitted receiving such reports from all these territories, but claimed that they were destroyed from time to time, and that he had none except for a very recent period. He said nothing about their being turned over to the statistical department, as subsequently appeared to be the case. (Tilford, vol. 2, pp. 679–87.)

Finally it was learned from the testimony of H. G. Westcott, the selling agent at New York for the Standard Oil Company of Kentucky, that the reports of this character which he received from the Standard of Kentucky were turned over to W. E. Bemis, who had charge of the statistical department at 26 Broadway (vol. 2, pp. 709–10). The Government finally found that Christian Dredger, under Bemis, was then in charge of this statistical department. He was called as a witness, and admitted that such reports of competitive shipments were turned over to his office, and that from them he compiled general statistics showing the volume of competitive sales in each general marketing territory of the Standard Oil Company, and also in its smaller subdivisions, and in the principal towns throughout the United States. (Dredger, vol. 2, pp. 829–32.)

The Government secured from Dredger's office, and introduced in evidence, copies and extracts from these records showing the volume of competitive business. (Petitioner's Exhibits 387–90, vol. 8.) It also procured from the various sales agents having their headquarters at 26 Broadway—namely, Tilford, representing the Standard of Iowa and the Continental Oil Company; Westcott, representing the Standard of Kentucky; Drake, representing the Standard of Indiana; Cutler, representing the Atlantic Refining Company; and Donald, representing the Standard of New Jersey—the current reports received by them from their several companies showing individual shipments of competitors, and also summaries thereof showing the total competitive business for certain recent periods of time. Copies and extracts of some of these records were put into evidence, and

constitute Petitioner's Exhibits 313, 319, 329, 341, 342, 343, 344, 353, 354, and 355 (vol. 8). To illustrate the form of these reports of competitive shipments, we call attention to Petitioner's Exhibit 313 (vol. 8, p. 700), which is a list of shipments of oil by competitors in the territory of the Continental Oil Company (Rocky Mountain States) during certain months of 1907. The first column (see Tilford, vol. 2, pp. 687, 739) shows the date of the shipments; the second, the consignor; the third, the point of origin; the fourth, the consignee; the fifth, the point of destination; and the other columns the character and amount of the oil in the shipment.

Petitioner's Exhibits 387–390, which are the summarized records produced by Dredger, show how complete is the system of keeping track of competitive business. They cover every marketing territory of the Standard Oil Company in the United States, showing the volume of business done in such territory by the Standard Oil Company, the volume done by independent concerns, and the corresponding percentages. They also give similar figures for the smaller marketing districts in which the larger territories are divided, and likewise in many cases give separately figures for the main stations and for the substations under such main stations. We have already, in discussing the relation of the extent of competition to the prices charged by the Standard Oil Company, presented these percentages of competitive business.

Tilford and other sales agents who produced these papers testified that they did not know how this information regarding competitive shipments, which came to them from the head offices of the several companies, was originally procured by those offices. (McNall, vol. 2, p. 671; Tilford, vol, 2, p. 687; Westcott, vol. 2, p. 709; Drake, vol. 2, pp. 758, 759; Donald, vol. 2, pp. 818–825.) None of them directly testified that they knew that the reports did not come originally from railroad employees, though Tilford said he had been assured they did not. (Vol. 2, p. 687.) In the Missouri case in 1906, however, C. P. Ackert, general manager of the Waters-Pierce Oil Company, practically admitted that that company got such information from railroad employees, and paid for it (vol. 3, pp. 1109–11.)

We shall now take up the detailed evidence which shows that at least a large part of this information is so obtained from railroad employees and that in other cases it is obtained from the employees of competitors themselves who were bribed to furnish it, while in still other cases it is obtained by agents and employees of the Standard Oil Company spying upon the shipments or other business of competitors.

REPORTS OF COMPETITIVE SHIPMENTS SECURED FROM RAILROAD EMPLOYEES IN THE BALTIMORE TERRITORY AND USE MADE THEREOF.

The most complete and conclusive evidence on this subject relates to the Baltimore territory of the Standard Oil Company. This territory is what is known as the "Baltimore Division of the Standard Oil Company of New Jersey," and covers all or the larger part of the States of Maryland, Virginia, North and South Carolina, Georgia, and Florida. The testimony on this subject is chiefly given by E. C. Armstrong, who was an employee in the Baltimore office, having charge of records of competitive shipments, and by C. H. Mahle, who was also an employee in that office at the time in question. It is noteworthy that while the Standard Oil Company called various witnesses to deny as to certain other parts of the United States that such reports of competitive shipments were secured from railroad employees, absolutely no evidence of any sort was offered to contradict the testimony of these witnesses with respect to the Baltimore territory. It scarcely stands to reason that in one territory a complete and elaborate system of obtaining competitive reports from railroad employees, which we shall show existed here, should be employed, and the same not be true of other parts of the country. The evidence with respect to the Baltimore territory should therefore be constantly borne in mind in considering the less complete evidence as to other parts of the country, and in considering the attempted explanations and contradictions of that evidence presented by witnesses for the defendants as to other parts of the country.

It appears that Armstrong, about the end of 1902, after having been for some time employed by the Standard Oil Company at Baltimore, and having handled reports of competitive shipments, gathered together a large number

of such reports and other material from his office and delivered them to W. H. Fehsenfeld, manager of the Red "C" Oil Company, an independent concern of Baltimore, and it is these papers, which were introduced in evidence by the Government, that are the most conclusive proof of the practices pursued. (Armstrong, vol. 5, pp. 2223 et seq.; Fehsenfeld, vol. 5, p. 2328.) The counsel for defendants attempted to discredit the testimony of Armstrong by referring to his taking of these papers as stealing, but he testified that he turned them over to Fehsenfeld, instead of destroying them as he was expected to do, because, as he said on cross-examination (vol. 5, p. 2256) when provoked by defendant's counsel, he thought that it was a "dirty trick" on the part of the Standard Oil Company, and he thought that Fehsenfeld ought to be advised of it. We submit that it was a wholly justifiable act and far less reprehensible than the practice of the Standard Oil Company, which the papers disclose, and but for this act the court would be without this valuable evidence.

Armstrong testified that the competitive department in which he was employed was kept in a very secret manner; that the regular employees of the Standard in the same general office were not permitted to know what it was doing; that Myers, his superior officer in the department, instructed him to keep all information regarding it confidential, and not to allow the clerks in any other department to come into his office. (Vol. 5, pp. 2237–8.)

He testified that regularly there came to him from the refined oil department slips containing lists of competitive shipments of the character of Petitioner's Exhibits 715 to 737; that it was his personal belief that these slips came originally from employees of the various transportation lines in the Baltimore territory. (Vol. 5, p. 2267.) They were not usually signed, except in some cases reports came to him with the signature erased, that is, something at the bottom erased; and they did not usually show the name of the railroad or transportation line, and were usually on odd scraps of paper. They were in various handwritings and he and the other clerks, knowing the routes by which the various destinations were reached, knew that each report represented shipments from a certain point over a certain railroad

or steamboat line, and sometimes they marked the name of such railroad or steamboat line on the reports themselves. (Vol. 5, pp. 2222, et seq.)

Mahle testified that, while he was employed by the Standard, these reports first came to the refined oil department from C. W. Bender, who was then in charge of special work for the Baltimore office and who about that time was operating the bogus independent Dixie Oil Works. Mahle said it was generally understood that these reports came from employees of the transportation lines. (Vol. 5, pp. 2349–51.)

We now call attention to the use which was made of these reports. Armstrong testified that as soon as they were received they were examined by himself and other clerks and a notation was made opposite each item on the sheet, indicating the name of the Standard salesman into whose territory the shipment was made. Sometimes a notation was made to the effect that the shipment was made into territory outside of the Baltimore division—for instance, into the Cincinnati territory, controlled by the Standard Oil Company of Kentucky, which embraced that part of the Southern States adjoining the Baltimore division. (Armstrong, vol. 5, pp. 2223–4, 2238.)

After doing this, statements known as "competitive advices" were prepared by these clerks, one being addressed to the salesman in each territory to which shipments had been made, and containing a complete list of the shipments. (Mahle, vol. 5, pp. 2352–3; Armstrong, vol. 5, pp. 2238–39.) These competitive advices were made up in duplicate, one copy being retained and the other sent to the refined-oil department for transmission to the salesman. From the copy retained a record was transferred to cards, one card being kept for each consignee, on which was entered the separate shipments from time to time to such consignee. The copy of the competitive advice which was sent to the salesman would later be returned by him with a brief notation as to what action he had taken in relation to each shipment and why the Standard Oil Company could not get the business if it proved unable to do so. On the cards which we have mentioned, under the head of "Remarks," the salesman's notations were then entered in an abbreviated form. These cards thus constituted a complete history of the

shipments of competitors to each particular buyer and of all the conditions and circumstances surrounding his business. Samples of these cards are Petitioner's Exhibits 739 to 742. (Mahle, vol. 5, p. 2353; Armstrong, vol. 5, p. 2240.)

Farquharson, who was in charge of the Norfolk branch of the Baltimore division, also testified that he received at the Norfolk office from Baltimore such lists of competitive shipments as Armstrong said he prepared, and that he and other salesmen who received such lists were expected to visit the trade and learn why the purchaser was buying outside oil, and to try to get his trade for the Standard. He said that salesmen were authorized to go to almost any traveling expense to reach a single purchaser who had bought independent oil; that it sometimes would cost as much as $10 to investigate the sale of a barrel of oil the profit on which to the Standard's marketing company would have been only about 50 cents. (Farquharson, vol. 5, pp. 2208–9.)

Armstrong further testified (vol. 5, pp. 2241–2) that from these cards kept in his office a monthly statement was made out, showing the shipments into each salesman's territory during that month, as well as previous months of the same year, and that this was furnished also to the salesmen for their convenience. A sample of such a report is Petitioner's Exhibit 744 (vol. 10, p. 1793).

Still, again, the competitive department prepared from these cards each month a comparative statement of the total business of each competing oil concern for that month and for the corresponding month of the preceding year. This statement would show the gross amount of oil such competitor had received during the month, the shipments he had made to points outside the Baltimore territory, and the shipments to points within the Baltimore territory, and the sales by tank wagon, if any, in Baltimore proper and elsewhere. Petitioner's Exhibit 749 (vol. 10, p. 798) is a sample of such a monthly statement concerning the Red "C" Oil Company. (Armstrong, vol. 2, pp. 2244–47.)

Mahle gives further testimony of the use which was made of these reports of competitive shipments. He said when they first came into the office at Baltimore they were perused by the head of the refined oil department, and if the com-

petitor was found to be making carload shipments to a new point the agent at that point was telegraphed to furnish information immediately as to the local conditions, in order that the refined-oil department might give him instructions whether to cut prices or to use other means to prevent the sale of that oil. In some cases the bogus independent companies operated by the Standard Oil Company would be instructed to make special efforts to secure such trade. Often salesmen of the Standard would be able to get to the customer before the independent oil reached him and induce him by price cutting or otherwise to countermand the order. (Mahle, vol. 5, pp. 2352–3.)

An examination of Petitioner's Exhibits 715 to 737, which were proved by Armstrong to have been original papers actually received by the competitive department at Baltimore during 1902, will convince the court that they could have emanated originally only from employees of transportation lines. The very secrecy which they show on their faces is evidence that they did not come from employees of the Standard Oil Company. Had they done so, they would naturally have been upon printed forms, presumably with the name of the Standard upon them, and signed by the various agents of the Standard. As it is they are on all sorts of pieces of paper, of different sizes and styles. All but two of them are on blank paper, having no letter head or printing of any sort to indicate the source. All but three of them have no signature of any sort, and those three (Petitioner's Exhibits 721, 722, 731) which apparently originally had signatures, show a most complete blotting out thereof by heavy blue or black pencil marks. The two exceptions where the stationery used had printing upon it indicate that the reports came from employees of transportation companies: in one (Petitioner's Exhibit 720) the report is written on the back of blank bill forms of the Weems Steamboat Company, this report, according to the testimony of Armstrong, showing shipments of independent concerns by the Weems Steamboat Company; and in the other case (Petitioner's Exhibit 723) the report is made on the letter head of the Seaboard Air Line railway. Each of these reports covers usually about one week; each shows a number, sometimes a very large number, of individual shipments by inde-

pendent concerns, giving the date, the name of the shipper and the consignee, the destination, the number of barrels or other description of the shipment, and the character of the oil. Such complete information obviously could not be secured except from the records of transportation lines.

Further evidence that these reports in the Baltimore territory were secured from railroad employees appears from the testimony of Farquharson, who for some time prior to 1900 was employed by the Standard Oil Company at Norfolk, which is in the Baltimore division. He said that about 1896 T. J. Williams, then manager of the Baltimore Division, directed him to see if he could not make arrangements with the railroad clerks at Norfolk to get information of the shipments made from that city by certain wholesale grocers who were obtaining their supplies largely from independent refiners at Titusville. He declined to do so, but a little later was accosted by a young man, who said that he had been sent there to get information, and wanted Farquharson to furnish him the names of billing clerks of the various transportation companies; that no one was supposed to know that he was there; that he had been there about a week, but had been unable to make much headway. Farquharson declined to assist him, but about a week later the same young man told him that he was getting along pretty well, and that after he got one it was easy sailing. About thirty days after this the Baltimore office commenced to send Farquharson sheets showing shipments of these Norfolk jobbers. (Farquharson, vol. 5, pp. 2207–10.)

REPORTS OF COMPETITIVE SHIPMENTS OBTAINED FROM RAILROAD EMPLOYEES IN OTHER PARTS OF THE COUNTRY.

BIRMINGHAM, ALA.

G. T. Wofford, who was assistant to the manager in the office of the Standard Oil Company at Birmingham up to some time in 1902, testified that at that time the Standard had a system of obtaining from railroad clerks information concerning shipments of oil in that territory by independent concerns, including both shipments into Birmingham and shipments from Birmingham to all points. This information was sent by the railroad clerks to a post-office box, without any name, this box being rented by the Standard Oil

Company for that purpose alone. The information so obtained was furnished to traveling salesmen and other agents of the Standard with instructions to get the business in any way they could; the Standard was usually able to get its representative to the customer before the shipment got there. (Vol. 5, pp. 2152–5.)

E. L. Pauley, who became special agent of the Standard Oil Company at Birmingham after Wofford left, testified on behalf of the defendants that he did not know of any instances of obtaining information from railroad clerks or employees of competitive shipments, but this is obviously no answer to the testimony of Wofford, which related to a different period. The Standard called none of the employees who were in the office at that time to contradict Wofford. Moreover, Pauley, on his cross-examination, practically receded from every statement he had made on his direct examination, and instead of testifying positively, he would say that he did not remember instances of the reporting of competitive shipments or that he did not know. It is scarcely conceivable that there was a radical change in the policy of the Standard Oil Company in the Birmingham territory when Pauley came there. (Vol. 12, pp. 845–6, 862–67.)

TERRITORY OF STANDARD OIL COMPANY OF OHIO.

C. J. Castle was employed by the Standard from about 1885 to about 1900 as a special man in the sales department with headquarters at Cleveland. The territory of the Standard Oil Company of Ohio, with which he was then connected, originally included Michigan, part of Indiana, and nearly all of Ohio. Castle testified that during all that time the Standard Oil Company received reports of competitive shipments throughout its territory, which were generally understood in the office to come from railroad employees. (Vol. 6, pp. 3030–32.)

F. B. Squire, vice-president of the Standard Oil Company of Ohio, attempted to contradict this testimony, claiming that the information of competitive shipments was secured by the local agents and traveling salesmen of the Standard and not from railroad employees. (Vol. 13, pp. 1515–16.) Squire is the man who, notwithstanding his prominent posi-

tion, testified on cross-examination that he did not know anything about the ownership of the Standard Oil Company of Indiana, the National Transit Company, the Ohio Oil Company, the Union Tank Line Company, and the Solar Refining Company, all of which concerns have been for many years well known to be controlled by the Standard Oil Company and were so proved in this case long before he testified. (Vol. 13, 1581–84.) We have already shown cases in which his testimony is clearly unreliable, and do not consider that his testimony on this point will be given any weight.

Castle also testified to individual cases in which he knew of agents of railroads furnishing information regarding competitive shipments. He stated (vol. 6, pp. 3032–33) that at Alliance, Ohio, the agent of the Pennsylvania Railroad furnished such reports and received oil free as compensation, and that at Massillon, Ohio, the agent of the Wheeling & Lake Erie did the same, and also received oil as compensation. The defendants called the agent of the Pennsylvania Railroad at Alliance and the agent of the Wheeling & Lake Erie at Massillon, who denied that they had furnished such information or received oil therefor; but on cross-examination it appeared that there were numerous employees of the Pennsylvania Railroad at Alliance and several employees of the Wheeling & Lake Erie at Massillon. (Shimp, vol. 13, p. 1478; Hanson, vol. 13, p. 1480.) It is quite evident that Castle used the term "agents" in a general way, referring to some person connected with the railroad office, and that the mere statement of these two head agents is no contradiction of his testimony. In this connection it may be noted that Brusman was the Standard's agent at Massillon at the time testified to by Castle, and that on June 11, 1900, J. W. Hoag, who was manager of the Cleveland station for the Standard, wrote the letter (Petitioner's Exhibit 828) to Brusman at Massillon, asking him about certain shipments of the Freedom Oil Company, and saying:

> It seems to me that you could learn this of local freight agent. If you can, let us know.

Castle also testified (vol. 6, pp. 3032–3) that he knew about an arrangement at Lansing, Mich., where the clerk at the Grand Trunk depot was furnishing information regarding competitive shipments, and was furnished blanks by the Standard Oil Company upon which to report.

POINTS IN INDIANA.

R. T. Cooke, who was assistant to the manager in the Indianapolis office of the Standard Oil Company, testified (vol. 5, p. 2508) that J. N. Jenkins, the Standard's agent at Logansport, Ind., obtained information from a freight handler of the Wabash Railroad at Logansport regarding competitive shipments, and sent in expense reports to Indianapolis for payments to this freight handler, which were duly allowed. All of the substations in the Indianapolis territory sent in similar information, though Cooke did not state as to them generally that he knew how it was obtained.

Cooke also testified that during 1894 and 1895, when he was employed by the Standard as local agent at Columbus, Ind., he found an arrangement in effect by which Taylor, a foreman or warehouseman of the Pennsylvania Railroad at Columbus, furnished the Standard's office with a list of competitive goods passing through that freight house. This arrangement continued in effect while Cooke was there, and was in effect when he left. The reports covered shipments of all independent concerns coming into, going out from, or passing through Columbus. (Vol. 5, pp. 2503–6.)

Cooke also testified that the Standard Oil Company had a follow-up system, and on receipt of information regarding shipments a clerk would write to the agent in the territory to which the shipment was destined. (Vol. 5, p. 2507.)

POINTS IN ILLINOIS.

F. L. Hibbs, who had been a refined-oil salesman for the Standard in Peoria (Ill.) territory, testified that he was instructed by Lashley, special agent of the Standard at Peoria, to go to Monmouth, Ill., where an independent concern, the Royal Oil Company, was doing business, and make arrangements with employees of the railroads to furnish reports of that company's shipments; that he employed a freight handler in the office of the Illinois Central Railroad for $2 a month, who furnished this information, and that Lashley paid him the amount by cash or check. (Vol. 3, pp. 1336, 7.)

Lashley, testifying for the defendants, admitted (vol. 12, p. 1017) that Hibbs got this information, and that he did not know but that he got it from railroads, but asserted that he did not pay him the $2 a month. It may readily be,

however, that the item was included in Hibbs's expense accounts and paid in a general total, and not by way of separate, specific payment.

On cross-examination Lashley also admitted that the letter, Petitioners' Exhibit 905, emanated from his office. It bears date October 14, 1903, is addressed to the salesman Hibbs, and begins as follows: "The following competitive shipments have been made into your territory during the month of September;" and then lists 163 shipments of barreled oil to 107 customers in 54 towns during the month of September, 1903. It is difficult to believe that within fourteen days after the end of the month of September such full and complete information of these 163 shipments of barreled oil into Mr. Hibbs's territory could have been secured, unless it came from railroad employees or unless the information was taken from the barrels at the depots at the time the shipments were made. The information could not have been obtained simply by calling upon the purchasers of the oil after it arrived at destination; for instance, the dates of the separate shipments shown in the letter could not possibly have been ascertained in that way. All except 4 of these 163 shipments were made by the Royal Oil Company.

Later J. L. Trann succeeded Lashley as special agent of the Standard at Peoria. On March 16, 1904, he wrote to Hibbs (Petitioner's Exhibit 909):

> We are not getting a proper line on the outside shipments into our territory, and you will kindly advise us whether you take up with the agent each time you visit the station whether they are reporting outside shipments to us each day on Form 114.

Again on July 19, 1904, Trann wrote to Hibbs (Petitioner's Exhibit 910):

> Whenever we notify you of competitive shipments into your territory, we want you to keep the list constantly before you, and when you visit the town you are to follow each shipment up closely and report back to us fully upon same.

On October 17, 1904, Trann wrote to Mr. Hibbs, giving him a list of 19 competitive shipments made into his territory, mostly by the Royal Oil Company, between September 20 and October 10, and saying (Petitioner's Exhibit 911):

> We would ask that you kindly follow this up very closely and endeavor to get this business into line. Also

investigate these shipments and see if these parties received goods from these companies on these dates, and in case they did kindly advise us if it was the kind of goods as reported or not.

This letter, and also Petitioner's Exhibit 910, show that the reports of competitive shipments were not simply secured by the local agent on the arrival of the goods, but that the salesmen were notified of the shipments on the basis of information obtained from other sources and were then instructed to investigate and report upon each. In fact, throughout the evidence it appears that the Standard maintained a double system of keeping track of competitive business, obtaining information in the first place regarding shipments at the points of origin or at some junction point en route, and likewise obtaining information regarding the same shipments from the agents of the Standard at the points of destination.

Collings, vice-president of the Standard of Kentucky, attempted to contradict the testimony of Cooke and Hibbs, which we have cited, but all he said is practically that he did not know about the transactions. Collings's statement that he did not know about such transactions is of course no evidence that they did not occur. He said the Standard of Kentucky did not furnish any money for payment for reports of competitive shipments at Columbus, Ind., and he made a similar statement with regard to the money which Hibbs said was paid to the agent of the railroad at Monmouth, Ill. In fact, in his direct testimony Collings said definitely that the Standard of Kentucky did not pay money to railroad employees for information of competitive shipments, and did not permit it, and if any agent did so it was contrary to instructions, and the money must have come out of his or somebody else's private pocket. (Vol. 12, p. 894.) On cross-examination he was not quite so positive that the Standard Oil Company had never paid money for reports of competitive shipments. We quote from his testimony (vol. 12, p. 987):

Q. And your company never did?—A. Not that I ever knew of.

Q. Well, you would know of it if it was done, wouldn't you?—A. I certainly ought to know it.

* * * * *

Q. And if it was done and paid for by the Standard Oil of Kentucky, you would know it?—A. The treasurer's department should have furnished me with a memorandum of the performance of such an act.

Q. If Mr. Elliott did such a thing, he should have furnished you with a statement of it?—A. He certainly should, sir.

Q. If any such correspondence took place with Mr. E. B. Stanley, it was your duty to know about these payments, was it not?—A. I would know about them through the treasurer's department. Mr. Stanley's department might have failed to mention it, if they saw it, but Mr. Holmes's (the treasurer) department would not have passed that, I believe.

Mr. ROSENTHAL. Do you mean you *should* or you *would* have known it?

WITNESS. I *should* have known it.

Whether Collings *should* have known it or not, he evidently did not know what was going on or else did not testify truthfully. It is shown by a series of letters introduced by the Government that through W. C. Elliott, an employee in the treasurer's department, at Cincinnati, and through E. B. Stanley, general manager, the Standard Oil Company of Kentucky was paying money for information regarding competitive shipments. Collings's testimony with regard to the position and duties of Elliott indicates clearly that he did know, at least in a general way, about this system of obtaining reports of competitive shipments, and that he sought to conceal the situation from the Government. Before he was shown the letters to Elliott and Stanley or knew that the Government had them, he was asked (vol. 12, 985–6):

Q. Who was Mr. W. C. Elliott?—A. Mr. Elliott was a stenographer, originally in Mr. McDonald's office. When I went to Cincinnati I inherited him. He was with me for about two or three years after I went up to Cincinnati.

Q. During what years?—A. I think that was probably 1898, 1899, and 1900.

* * * * *

Q. He was your stenographer?—A. He was, for two or three years, probably.

Q. What other duties did he have to perform?—A. That was all he ever performed for me.

Q. No other duties at all?—A. No.

Q. He would not receive any mail from your special agents, intended for you?—A. He ought not.

* * * * *

Q. He had no business to receive mail about the business, personally?—A. He ought not to have received it. He was not an official. Therefore he was not qualified to——

Q. Now, if a large number of letters were addressed to him, what was done with them?—A. I don't know.

Q. You don't know anything about it?—A. No.

Q. Where is Mr. Elliott now?—A. He is dead.

This testimony was evidently intended to give the impression that Elliott was an ordinary stenographer working for Mr. Collings. After being shown these many letters to Elliott regarding competitive shipments, Collings was asked whether it was not a fact that Elliott looked after competitive shipments, and he said he did not "under my jurisdiction." After this evasive answer he finally admitted that Elliott worked most of the time for the treasurer; that he had a room of his own on the floor where the treasurer was located; that the treasurer had charge of competitive shipments as "an accounting proposition." Collings said that he never thought much of Elliott as a stenographer, because he was deaf. He said that all he knew about the reporting of competitive shipments was that from time to time statements showing the total volume of business of the different concerns were furnished him by the statistical department. (Vol. 12, pp. 998–1000.)

It is perfectly evident from the letters which were addressed to Elliott that he was no ordinary stenographer and that he actually did have charge of the reports of competitive shipments. Moreover, it is shown by the Maxon letters (Petitioner's Exhibits 866, 867) that Elliott traveled to East St. Louis to perfect the arrangements there for reporting competitive shipments passing through that point.

It is evident from all this that Collings was seeking to conceal the duties which Elliott performed and about which he certainly must have known. It is also evident that the treasurer, who had direct charge of the matter of competitive shipments as "an accounting proposition," according to Collings's own testimony, might easily have made

payments therefor without Collings's knowledge. The treasurer was the man who could have given authoritative testimony for the defendants, but he was not called.

We now desire to call the attention of the court more particularly to these many letters addressed to Elliott and Stanley. They are all from Maywood Maxon, who was then in charge of the Decatur territory of the Standard Oil Company of Kentucky. Aside from letters from Maxon to Elliott and Stanley, there are numerous other letters and memoranda from him dealing with the same general subject of the reporting of competitive shipments. All these letters are admitted to have been written by Maxon in the ordinary course of business, and sent to the persons addressed. The earliest of them (Petitioner's Exhibit 860) is as follows:

Personal.] MAY 28th, 1908.

Mr. W. C. ELLIOTT, *Cincinnati.*

EXPENSES.

DEAR SIR: Referring to conversation with you yesterday at St. Louis in regard to expenses for information, I wish you would please send me check for $21.40 as promptly as you can. $7.00 of this amount is what I have written you about in the past. $4.40 is for information about the shipments of Mr. T. D. Wilson at Litchfield, and $10.00 is for information up to date at E. St. Louis.

Yours, truly, M. MAXON, *Manager.*

This letter relates evidently to reports of competitive business, particularly the shipments of T. D. Wilson, of Jacksonville, and shipments at East St. Louis. It asks for $10 to cover the expense of obtaining the information at East St. Louis.

Four days later, June 1, 1898, Mr. Maxon wrote to L. H. James, local agent of the Standard at East St. Louis, inclosing him a draft for $10, which he must evidently have obtained from the Standard at Cincinnati in accordance with the letter of May 28. (Petitioner's Exhibit 872.)

This arrangement with regard to obtaining reports of competitive shipments at East St. Louis had been made somewhat earlier, as appears by Petitioner's Exhibit 864, a letter

from Maxon to Elliott, dated May 4, 1898, in which Maxon says:

> Referring to the question of getting shipments passing through E. St. Louis to southern points, we begin to get a little result as far as the I. C. road is concerned, and prospects are that we will soon be in position with the M. & O.

Then follows a list of carload shipments from East St. Louis in April, and the letter continues:

> The party furnishing me this information has neglected to give the number of the tank car shipped from Oil City passing through on the 28th.

The Standard has no refinery at Oil City.

On the same day Maxon wrote to James, the agent of the Standard at East St. Louis (Petitioner's Exhibit 865):

> Your letter of the 2nd in reply to mine of April 30th to hand and noted, and I am certainly pleased to learn you have made arrangements we talked about. Trust you will be successful on the M. & O. In writing in regard to these matters always address me under personal cover, and oblige.

It will be seen from this letter that arrangements of this sort had been made orally and that the correspondence was to be handled in a confidential manner.

Various other letters were written by Maxon to Elliott and to James regarding the reporting of competitive shipments at East St. Louis. Several of these letters, addressed to the Cincinnati office by Maxon, contain lists of shipments from East St. Louis. Altogether the Government introduced about a dozen letters written by Maxon to Elliott and Stanley in which he asks them to send money to pay for obtaining information regarding competitive business. These are strung along from May, 1898, to August, 1900. It is inconceivable that he would continue to send these letters unless the payments were received.

That the information which Maxon thus obtained and for which he made these payments came at least in part from railroad employees appears from one of the letters which he wrote to Elliott, dated November 9, 1899 (Petitioner's Exhibit 863), in which he says:

> Now, in reference to Decatur, I wish to frankly admit that I can not make arrangements here to get this

information. It might be that you could come in here and do so, being an entire stranger. *There has been quite a number of changes in the railroad people in the freight houses in this city, and there are a great many more on the anxious seat.**

This unquestionably refers to the difficulty encountered in secretly getting information from railroad employees. The information was evidently here and in other cases usually obtained from subordinate employees, who did not disclose what they were doing to their superior officers, and who were afraid of detection; and when in the cases mentioned above (p. 599) the defendants called the head agents of the railroads at Alliance and Massillon, Ohio, to reply to Castle's testimony, they called the wrong persons.

As we have already stated, several of these letters of Maxon were addressed to E. B. Stanley. Note, for example, Petitioner's Exhibits 825, 859, 882, 883, 884, 885, 886, 887, 889, 890, 894, 896, and 897. Some of these letters ask Stanley to furnish money to pay for this information. Stanley was seated in the court room (see vol. 12, p. 996) when these letters were introduced in evidence and when Collings was being interrogated regarding them. He could have given evidence from actual knowledge, which Collings could not do, but was not called to the witness stand by the defendants.

COUNCIL BLUFFS, IOWA, AND LINCOLN, NEBR.

Frank Gamerl, who at the time referred to in his testimony, 1895 and 1896, was employed by the Standard at Council Bluffs, Iowa, testified that he obtained reports of competitive shipments from employees of the Burlington, Northwestern, Union Pacific, and Milwaukee railroads, covering all independent oil passing through Council Bluffs; that these reports showed the name of the consignor, the name and address of the consignee, and the number of barrels in the shipment; and that under the instructions of the Standard's agent at Council Bluffs, John W. Smith, he gave these employees oil for such service. (Vol. 6, pp. 3142–3.)

He also stated (p. 3143) that he tried to make arrangements with railroad taggers and men whose business it was

* Italics are ours.

to get car numbers, etc., to make reports of the shipments from Lincoln, Nebr., of the Marshall Oil Company, an independent concern, and did not succeed, but that the Standard's own employees obtained the information by watching the goods at the depots. Later, when Mr. Gamerl was a traveling salesman for the Standard, he received from the Standard's office lists of competitive shipments into his territory.

L. J. Drake was called by the defendants and testified that he was in charge of the Council Bluffs territory in 1895 and he did not know of any such arrangements as Gamerl testified to, and that he gave positive instructions to all employees not to give away oil, so that if it was done it was done on their own initiative. (Vol. 13, p. 1072.) Drake's jurisdiction covered a great area, and he would not naturally have made these arrangements personally to secure competitive shipments. Gamerl had stated that they were made by the instruction of John W. Smith; hence Drake's general statement is no contradiction of the testimony of Gamerl.

WATERS-PIERCE TERRITORY.

H. J. Cohn, who was a salesman and division auditor for the Waters-Pierce Oil Company from 1900 to 1903, testified that during this time there was a system in vogue by which the Waters-Pierce furnished reports to its salesmen showing the competitive oil shipped into their respective territories; that frequently, on the basis of these reports, such salesmen would tell customers of independent oil companies about shipments of oil before the goods arrived; that the salesmen were instructed to find out the circumstances, the prices, and why the Waters-Pierce could not sell the customers. Cohn also testified that he was instructed by Ackert, the general manager of the Waters-Pierce, to falsely tell such customers that the oil they had bought had been originally purchased from the Waters-Pierce Oil Company and that the Waters-Pierce could supply the same oil directly at a lower price. (Vol. 2, pp. 906–10.)

Ackert was called as a witness for the defendants in the Missouri case in 1906, and on cross-examination was compelled substantially to admit that the Waters-Pierce Oil Company regularly got reports from railroad employees

regarding competitive shipments, and that these reports were paid for; and that the information thus obtained was sent to the Waters-Pierce agents, with instructions to cut prices if necessary to get the business. (Vol. 3, pp. 1110–12.)

KANSAS CITY AND POINTS IN KANSAS.

W. N. Davis, who was local manager for the Consolidated Tank Line, a Standard concern, at Kansas City about 1890, testified that that company got information as to competitive shipments into its territory from the receiving-clerks of the various railroads, and also employed a young man to go to the different freight houses at Kansas City every day and find out independent shipments; that from these reports the traveling men of the company were notified of shipments into their territory, often receiving the information before shipments reached destination. (Vol. 2, p. 954.) There is no contradiction of this testimony as to the period covered by it. Drake, who went there shortly after Davis left, said that he found no such practice in vogue (vol. 13, p. 1068); but this is no contradiction of the testimony regarding what happened previously. We shall show shortly that Drake's statement as to the practice while he was at Kansas City is also disputed by other witnesses.

W. H. Hawkins, who was superintendent of tank wagons for the Consolidated Tank Line and the Standard at Kansas City from 1890 to 1897, testified (vol. 2, pp. 988, 991–3; vol. 3, pp. 1246–7) that these concerns had a system of getting information from the railroads leading out of Kansas City regarding competitive shipments; that when such information was secured they would rush a man out and get a countermand of the order; that they had a regular man, William Faulkner, whose business it was to go to the freight offices of the railroads and get such information; and that he at times went on Faulkner's behalf. Hawkins mentioned the name of a receiving clerk at the Union Pacific from whom he personally got this information, and also said that he went with Faulkner to the Missouri Pacific office and got it from the bill clerk there several times. He said further that information as to shipments of independents coming into Kansas City was received from points where the shipments crossed the Mississippi River and was verified by

watching the side tracks of competitors at Kansas City, and that the management at Kansas City had to report where the oil went to from there.

W. R. Stewart, who was general manager of the sales department for the Kansas City and St. Joseph territory of the Consolidated Tank Line and the Standard from 1890 to 1898, testified that, as a rule, they got information as to competitive shipments from persons connected with the railroads. (Vol. 3, pp. 994–5.)

E. P. Pratt testified that he was manager of the Kansas City branch of the Consolidated Tank Line Company for some years, beginning in 1892; that he hired clerks in the various freight offices at Kansas City to furnish him a list of the parties to whom independent shipments were made, but this was done without the knowledge of the railroad companies themselves; and that he had instructions to direct the salesmen under him to have the orders for these shipments countermanded if possible and to make a price necessary to secure the trade, but not actually to make the customer a present of the goods. (Vol. 2, pp. 959, 960, 966.)

This was during the time that Drake says he had general charge over the Kansas City territory, being a superior officer of Pratt. Drake testified (vol. 13, pp. 1068–9) that Pratt made such arrangements, if at all, on his own authority and without any instructions from Drake, and that he furnished Pratt no money with which to pay for such information. On cross-examination (vol. 13, pp. 1093–96) he was asked if he ever authorized the payment of money for information from railroad clerks, and he said he never did to his knowledge. He might readily have forgotten, since this testimony related to a period back in the early nineties, and others may have authorized things without his doing so. He said that Pratt had authority to get the information in honorable ways without asking him, and he admitted that there was a record kept of competitive shipments into his territory, such information being received from Bemis's office at New York, and that this information showed the point of origin and destination of the shipments and very often the car numbers. He was asked how this information could be obtained unless it was obtained from railroad employees, and he said he did not know. We submit that

this is no contradiction of Pratt's specific testimony that he did hire railroad clerks to furnish this information, and it is inconceivable that Pratt should have paid for it out of his own pocket. In fact, Drake admitted, in another connection, that Pratt may have paid for information, for when he was shown that Mayer, who succeeded Pratt, had paid money to get such information, he said: "I think he inherited that from the manager preceding," and that the manager preceding was Pratt.

Q. Then Mr. E. P. Pratt had been doing it, had he?—A. He may have been; I don't know. (Vol. 13, p. 1090.)

We now call attention to the matter of the payment for competitive information authorized by Mayer, to which we have just referred. E. M. Wilhoit, who was agent for the Standard at Topeka and Wichita, Kans., from 1891 to 1898, testified that in every instance where a carload of oil from an independent was shipped into that territory, he was notified by letter or telegram from the Standard Oil Company that the car had started; that while he was agent at Topeka that agency was allowed $8 a month for the purpose of securing from railroad employees at that place information regarding competitive shipments, Pratt forwarding this $8 from Kansas City by his personal check; and that later Mayer, who succeeded Pratt, did the same, the amount being reduced to $6 per month. He said the checks came in blank envelopes without any letter, and the instructions as to what should be done with the money were given verbally. The clerks of five different railways were called upon once a week for this information, which was generally written on a small slip of paper and handed to the drayman who took oil to the railroad. (Wilhoit, vol. 3, pp. 1212–14, 1218–19.)

This testimony of Wilhoit was given in the Missouri case. After he had testified, Mayer was called to the stand in that case and denied any knowledge of furnishing money to local agents for the purpose of securing information, and positively denied that he had ever given his individual check to any agent for that purpose, or had given any instructions, oral or otherwise, about obtaining this information. (Mayer, vol. 3, pp. 1239–40.) Wilhoit was again called to the stand, and produced two letters from Mayer, which completely

contradict Mayer, and which were as follows (vol. 3, p. 1256):

STANDARD OIL COMPANY
(Incorporated.)
G. W. MAYER, Manager.

KANSAS CITY, Mo., *10/26/96.*

(Personal)
Mr. E. M. WILHOIT,
Topeka, Kans.

DEAR SIR:

After the 1st of November I will discontinue sending you check in payment of outside information which you have been getting us. Mr. Drake wants us to stop these payments beginning the 1st of the month. I think no doubt you can get the bulk of this information if you will watch the matter in your territory, and I wish you would please take particular pains to give us all the outside shipments as far as you can ascertain. If you will make it a special point to watch for these shipments, I am confident you will be able to get the bulk of this information for us. At the 1st of the month I will make you a remittance as formerly sent you, but after that date there will be no check mailed you in payment of this information.

Yours, truly, G. W. MAYER.

The second letter on the same letter head is as follows:

KANSAS CITY, Mo., *11/11/96.*

Mr. E. M. WILHOIT,
Topeka, Kans.

DEAR SIR: I inclose you herewith check for $4 to pay for the outside information for last month. This you understand will be the last remittance made to you for this.

Yours, truly, G. W. MAYER.

Drake (vol. 13, pp. 1088–89), being shown these letters, said that he heard about the time referred to that Wilhoit had been making these payments, and that he directed that it be stopped, as indicated in the letter above quoted. He had previously testified on direct examination on this matter of payments by Wilhoit, as follows (vol. 13, p. 1074):

Q. What do you know, if anything, about his having any money allowed him for any such purposes?—A. I do not know a thing about it.

Q. Did he have any money allowed him for any such purpose?—A. Not that I know of—not to my knowledge.

Q. Were you in a position to know if such had been the fact?—A. Possibly I would not know anything about it.

On his attention being called to the inconsistency between these two parts of his testimony, Drake merely said that he had not had positive knowledge, but had heard it in a roundabout way about Wilhoit's making these payments.

Drake's statement just quoted, "Possibly I would not know anything about it," is sufficient to show that his entire testimony with reference to the obtaining of information of competitive shipments is of little value. It may be that Drake personally did not approve of paying money to get such information, but he admitted (vol. 13, p. 1093) that agents were expected to get information about competitive shipments, and the evidence throughout this case goes to show that the agents were very strenuously required to keep track of competitive shipments. For example, we call attention to the following letter from Pratt, a subordinate of Drake's, to the agent of the Standard at Topeka (see Wilhoit, vol. 3, p. 1261):

KANSAS CITY, MISSOURI, *1/4/96.*

AGENT, S. O. COMPANY,
Topeka, Kansas:

Under date of December 20 I understand the National Oil Company received Germania tank car No. 68, shipped from Oil City, Pennsylvania, containing 89 barrels of gasoline. I have not seen this reported on your form forty-four. Please look the matter up immediately.

Yours truly,

E. P. PRATT, *Manager.*

This letter shows in the first place that the Standard had got information of this shipment either at the point of origin or at some point en route, presumably at the point of origin, because the date when the car went forward is named. It shows in the second place that the agent at Topeka was expected to look up and report immediately on the receipt of this car. It may be noted that form 44, which is mentioned in this letter, is also referred to by

numerous other witnesses as being the form on which local agents and other Standard employees were required to report competitive shipments.

It was but natural that this insistence on the part of their superior officers should lead the Standard's agents and salesmen to resort to any means, whether honorable or otherwise, by which information could be secured, and the higher officers of the company could not relieve themselves of responsibility for this abuse even if they did not personally direct it. It is impossible to believe, however, that in general the higher officers of the company were not fully aware of the methods by which this information was procured, or that many of them at any rate did not themselves give instructions for procuring it from railroad employees and authorize payments therefor.

E. M. Wilhoit testified that, aside from being paid for information, railroad employees were sometimes influenced to furnish it by being told that if they would be friendly to the Standard they might secure a position with that company at a higher salary. He also said that oil and gasoline were sometimes given to get this information, and that such gifts were reported as "donations" in the stock account. (Vol. 3, pp. 1220–1.)

As an indication of the secrecy with which this practice of obtaining reports from railroad employees was pursued, we call attention to the testimony of Wilhoit (vol. 3, p. 1263), that, at the time Pratt resigned as manager at Kansas City, he wrote to Wilhoit several times asking for the names of railroad employees from whom Wilhoit had received this information. Wilhoit, however, did not give him the names, and later on Mayer, who succeeded Pratt, asked Wilhoit for these letters from Pratt, and took them away. This was apparently for the purpose of destroying the written evidence.

Wilhoit said there were very few written communications on this part of the business, and that it was usually done in a personal way.

OTHER UNFAIR METHODS OF OBTAINING INFORMATION REGARDING COMPETITORS' BUSINESS.

The testimony thus far summarized relates principally to the practice of obtaining reports of shipments of competitors from employees of railroads. Aside from this method of keeping track of competitors' business, other methods were employed by the Standard Oil Company, not merely to ascertain shipments but also to ascertain the names of customers to whom independent concerns sold from tank wagons, or the names of consumers who were buying independent oil from peddlers.

Of course we do not mean to argue that it is not legitimate for the Standard Oil Company to ascertain in any honorable way what its competitors are doing, but in some instances at least the methods of obtaining the information were not honorable. At this point we desire to call attention to a few flagrant instances of dishonorable methods of securing information; other cases of spying on the business of competitors are mentioned in the section of this brief on Bogus Independent Concerns.

ALBANY, NEW YORK.

As already stated, Hisgen Brothers have for some years been actively competing with the Standard Oil Company in the sale of oil at Albany. It appears that in the spring of 1904 Mr. Van Deusen, the Standard's manager at Albany, employed the Empire Detective Agency to secure information regarding the business of the Hisgens. The transaction is described in the testimony of H. J. Crawford, who was a part owner of the Empire Detective Agency (vol. 4, pp. 1952–62), and also in the testimony of L. R. Herdick, a driver of the Hisgens, to whom a bribe was offered to furnish information (vol. 4, pp. 1923–28). There is no contradiction of this testimony by the defendants.

It appears that Van Deusen asked the managers of the detective agency to have someone bribe a driver in the employ of the Hisgen Brothers to furnish reports of their business. The detective agency engaged a man for this purpose, who met Herdick and represented himself as in the insurance business. Later he met Herdick again and told him what

his real business was, and entered into an arrangement by which Herdick was to furnish at stated periods reports showing the business of Hisgen Brothers. He agreed to pay Herdick $5 for each report, and actually gave him $5 in advance. Herdick immediately informed Hisgen Brothers of what had taken place, turned over the identical $5 to them, which was marked for identification and produced at the time of taking the testimony in this case. He was instructed by his employers to proceed to carry out the arrangement.

The man who had interviewed Herdick told him that he would receive a letter of instructions from New York. He did receive such a letter (Petitioner's Exhibit 645) signed "Frank Miller," instructing him to send a report on the 10th of each month to Frank Miller, 156 West 105th street, New York City, and to sign with an "X." Petitioner's Exhibit 647 is a letter subsequently received by Herdick from Frank Miller, dated May 13, 1904, which says in part:

> Report received and is satisfactory for a beginner. Try to be more accurate in the information in future, and have report include in full—
> (1) Dates when cars arrive.
> (2) Whether box or tank cars.
> (3) All letters and numbers on cars.
> (4) Contents of cars.

The man who went under the name of Frank Miller was really named Carhart. He forwarded the reports sent him by Herdick to the Empire Detective Agency at Albany, and they in turn delivered them to the Standard. Van Deusen furnished the Empire Detective Agency the money which was paid to Herdick.

Crawford also testified that Van Deusen employed the Empire Detective Agency to furnish men to follow up and watch the wagons of the Hisgens in Albany and also the wagons of the independent Tiona Oil Company at Troy; that sometimes they would have one man following the wagons and sometimes as many as three; that these men kept a record of the places where the wagons made stops; that each of them was paid $4 a day by the detective agency, and that the Standard paid the detective agency for the services thus rendered.

Hogan, one of the men who was employed by the detective agency to follow Hisgen Brothers' wagons, confirms this testimony. (Vol. 4, pp. 1929–31.)

BIRMINGHAM, ALA.

G. T. Wofford testified that when the G. T. Wofford Oil Company started in business in Birmingham, in 1905, the Standard had a man follow their tank wagons on a bicycle constantly to count the number of buckets delivered at each store. Later the Standard tried to get reports from the drivers of the Wofford Company's wagons. Wofford instructed one of his new drivers that the Standard Oil Company would probably approach him in a day or two with a proposition to pay him for information, and that he should accept, and instructed him to agree to give a copy of the bills each night for 50 cents a day. Soon a representative of the Standard Oil Company actually did make this proposition, and the driver furnished him misleading reports, which were made out by the manager of the Wofford Oil Company. (Vol. 5, pp. 2157–8).

Pauley, the special agent of the Standard at Birmingham during this time, testified that he never authorized an employee of the Standard to procure information from a driver of the Wofford Oil Company, and that it was never done with his knowledge or by his approval, and he does not think it was done at all. (Vol. 12, p. 849.)

Wofford's specific statement remains uncontradicted. Pauley's subordinates might have done things of which he did not know. His duties covered the entire Birmingham division, including all or nearly all of Alabama.

PEORIA, ILL.

W. S. Merritt testified that Frank Busch, assistant manager of the Standard at Peoria, offered him $20 a month if he would get information regarding the shipments of the Royal Oil Company from Peoria; and that he got the information by bribing McKinley, a teamster of the Royal Oil Company, for $2.50 a week to furnish a report of all shipments, Merritt in turn giving these reports to Busch. This arrangement continued for about six weeks when it was

discovered and the employee discharged. (Vol. 3, pp. 1347–8.) This statement is corroborated in every respect by the testimony of Mr. Z. D. Ells, manager of the Royal Oil Company at Peoria, who discovered the bribery of his employee by Merritt. (Vol. 3, pp. 1374–5.)

Collings testified that he never heard of this transaction and that it could not have been done without his knowledge unless the employees paid the money out of their own private pockets. (Vol. 12, p. 894.) We have shown how little Collings knew, or admitted that he knew, regarding other transactions of this same character, and have shown that it was not Collings who handled these matters. If the defendants wished to contradict this testimony they should have called both Busch and the treasurer of the Standard Oil Company of Kentucky.

SPRINGFIELD AND DECATUR, ILL.

Among the other letters which Maxon wrote to E. B. Stanley regarding the business of competitors were several respecting the tank-wagon business of the Merchants' Oil Company at Decatur and Springfield, Ill. Petitioner's Exhibit 859 is a letter from Maxon to Stanley dated January 22, 1900, as follows:

Merchants' Oil Company's sales:

> Your letter of the 20th in regard to the above subject is to hand this morning and carefully noted. I shall do the very best I can to comply with your request, but it is certainly very difficult to get information just as we would like to have it. It is impossible for me to get a close reliable estimate of their tank-wagon business at Springfield or barrel shipments from either point.

The same exhibit contains another letter dated January 23, which gives the gallonage sold by the Merchants' Oil Company at Decatur from January 17 to 20, 1900; apparently this would indicate that some arrangement had been made by Maxon to get the information desired.

Petitioner's Exhibits 882, 883, and 884 are letters from Maxon to Stanley, written in March, 1900, stating the gallonage of the tank-wagon sales of the Merchants' Oil Company at Decatur and Springfield. Petitioner's Exhibits 886

and 887 relate to payments for this information and are as follows:

AUGUST 31.

Mr. E. B. STANLEY, G. M.,
Cincinnati, Ohio.

DEAR SIR: Attached find statement extra expenses for Aug., 1900. Please have draft sent me for amount and oblige.

Yours, truly, M. MAXON.

Aug. 31, 1900.

Fifteen and $\frac{no}{100}$ $15.00

Information	M. O. Co.	T. W. business, Decatur	$8.00
"	"	B. W. shipments	2.00
"	"	T. W. business, Springfield	5.00
Total			$15.00

This shows money paid for information regarding the tank-wagon business at Decatur and also at Springfield. The correspondence does not show how the information was secured, but the fact that special payments were made for it shows that it was not secured by the ordinary employees of the Standard Oil Company in the course of their business; it must have been obtained either from employees of the Merchants' Oil Company or by persons specially employed to follow their tank wagons. Petitioner's Exhibits 896, 897, and 885 also relate to payments for this information (the latter exhibit follows 897 in the letter-book from which they were collectively taken).

KANSAS CITY TERRITORY.

W. H. Hawkins, who was in the employ of the Standard at the time referred to in his testimony, said that, when it was not possible to get information regarding competitive shipments from railroad employees, the Standard would try to subsidize an employee of the independent concern and get the information in that way; and he mentioned one case in which through a tank-wagon driver he had thus subsidized an employee of Scofield, Shurmer & Teagle, at Kansas City. (Vol. 2, p. 993.)

INFORMATION OBTAINED BY THE STANDARD FROM OIL INSPECTORS' OFFICES REGARDING COMPETITIVE BUSINESS.

C. J. Castle testified that, while he was in the employ of the Standard from 1886 to 1900 in the territory of the Standard Oil Company of Ohio, the state oil inspectors furnished the Standard monthly reports of their inspections of oil, and that he frequently saw the deputy inspectors at the Cleveland office of the Standard. (Vol. 6, p. 3034.) Petitioner's Exhibit 827 is a letter written by C. J. Taplin, manager of the refined oil and naphtha sales department at Cleveland, to J. W. Hoag, dated June 15, 1900. It states:

> It is important that as far as possible we secure the monthly competitive inspection through our local agents. There is no reason why our agents should not be able to secure this information promptly at points where deputy inspectors are located. Of course it is an "open book," and their excuse for asking for the figures is simply in order that they may have the information a little earlier than if obliged to get it through the regular channel. I assume that most of our local people are in close enough touch with the deputies to secure the desired information. Kindly impress upon them the importance of securing same promptly on the first of each month, forwarding to you, and you in turn to me, so that I will get the information not later than the 5th of the month.

F. B. Squires, vice-president of the Standard Oil Company of Ohio, called by the defendants, stated (vol. 13, p. 1516–17) that the oil inspectors maintained public records that were open to anyone, and that the Standard had a right to examine these records for the purpose of ascertaining shipments or sales of competitors, and competitors could do the same. These records are public records for one purpose only, which is to show whether the oil bears the proper test. Moreover, the information which the Standard received was advance information, the above letter showing plainly that it was secured before the results of the inspections became a public record; and the Standard could have no legitimate need for advance information or for any information whatever except for the purpose of endeavoring to take trade away from the independents.

J. W. Fromeyer, who was manager of the Standard's Indianapolis territory for some time, testified that reports

came to him mysteriously every day, delivered by a boy and written on plain paper in lead pencil, showing the shipments of independent concerns, that he believed these came from the office of the state oil inspector, and that the practice continued until it was exposed by independent oil companies. (Vol. 3, pp. 1325–6.)

R. T. Cooke, who about 1900 became assistant to Wilson, the latter having succeeded Fromeyer as manager at Indianapolis, testified (vol. 5, p. 2507) that for about a year information of competitive shipments came to the office from a source which was rather a mystery to him at the time, but he afterwards learned from Wilson that it was delivered by a young man who was in some way connected with the oil inspector's office at Indianapolis; that this young man went around examining barrels in the freight depots under the pretence of ascertaining whether or not they were correctly branded by the inspector's office; that he usually came every day with these reports and was very quiet about it; and that these reports showed the shipments of all companies doing business in Indianapolis except the Standard, giving the names of the consignor and consignee, the quantity and kind of oil.

Collings, testifying for the defendants, said (vol. 12, pp. 892–93) that he had never heard of such a thing and did not believe there was a word of truth in it, but this is no contradiction of Cooke's specific testimony. Collings was at Cincinnati and could not be expected to know all the details of the conduct of the business throughout the great territory of the Standard Oil Company of Kentucky.

Petitioner's Exhibit 840 is a circular letter addressed to salesmen, signed by John B. Ruth, manager, on the letter head of the Standard Oil Company, dated September 16, 1904. It was received by Frank Gamerl (vol. 6, p. 3144), while he was a salesman of the Standard in Nebraska. The letter is as follows:

> You understand we get a report from the state oil inspector every month, showing the number of barrels our competitors receive each of oil and gasoline, and from this report I find that the Mutual Oil Company is shipping out from 40 to 50 barrels a day; and yet the reports of competitive shipments sent in by our salesmen on Form 114 do not show anything like this amount;

and our home office can not understand why there should be such a discrepancy. If you will give this matter your strict personal attention, it does appear to me that you ought to be able to find out how much of this oil and gasoline goes into your territory. I feel that salesmen with ordinary judgment can get this information without making the merchant feel that they are too inquisitive, or that they are trying to pry into his private business. What it requires is a little diplomacy. We are not endeavoring to get this information for the purpose of criticism; what we want to know is who is receiving the outside oil and gasoline, and if we knew it would put us in a position to help you get the business. I want you to make a special effort in this matter, and send in Form 114 every day, and give us all the information you possibly can. Kindly bear this in mind, and oblige,

Yours, truly,

JOHN B. RUTH, *Manager.*

At this point we may also call attention to certain testimony with regard to the abuse of the oil-inspection system in the interest of the Standard. Maywood Maxon, who for many years was special agent of the Standard in the Decatur (Ill.) district, having a considerable territory under his jurisdiction, testified (vol. 3, pp. 1298–1300) that the inspection of refined oil in his territory was simply a farce; that many of the inspectors did not have instruments for inspecting oil, and did not know how to inspect it, and had no desire to do so; that they would let the Standard itself have the stencils (for branding the statement of inspection on barrels, etc.) and use them, without any actual inspection. He said, further, that oil inspectors at the instance of the Standard, sometimes being influenced by a cigar or a drink, would often condemn the oil of competitors although it was up to the legal test, and thus prevent its sale. He mentioned an instance at Vandalia in 1900 when the inspector condemned a carload of oil shipped in by the Tiona Oil Company, although as a matter of fact the oil would have stood the legal test.

Collings (vol. 12, p. 890–91), referring to this testimony regarding the condemning of competitors' oil, said he never heard of such a thing and did not believe it could have happened without his hearing of it, which is simply

his opinion. Collings also testified that he gave no instructions to Maxon to have oil condemned wrongfully, but there were many other persons in the Cincinnati office who gave directions to Maxon on various subjects and who were not called to testify. Collings also said that no money was furnished for this purpose, but there had been no testimony that money was furnished, only cigars and drinks. In view of Maxon's statement that the oil inspection was a farce, and in view of the fact that the Standard was the concern for which most of the oil was inspected and from whom the inspectors received most of their fees, it is evident that without actual payments other than fees the Standard could bring much influence to bear upon the inspectors.

DEFENDANTS' TESTIMONY ON PRICE CUTTING BY INDEPENDENT COMPANIES.

ALLEGED PRICE CUTTING BY THE RED "C" OIL COMPANY.

The defendants put on a number of witnesses to testify to alleged cuts made by the Red "C" Oil Company in certain towns throughout Maryland, Virginia, and the Carolinas. The testimony is somewhat detailed, but scarcely deserves consideration. In some cases the witnesses for the defendants were very indefinite in their statements; they could not give dates of the transactions and were uncertain of the amount of the alleged cuts. Where the testimony was indefinite the Government naturally was unable to rebut it, as there were not sufficient facts on which to proceed. As to practically all the cases where the testimony regarding price cutting by the Red "C" Oil Company was in the least definite, the Government proved on rebuttal either that the witness was mistaken or that the differences between the Standard's and Red "C's" prices were merely due to the proper and natural policy of the Red "C" Oil Company in selling at uniform net prices throughout its territory, whereas the Standard discriminated very greatly in its prices at the various points.

W. H. Fehsenfeld, president of the Red "C" Oil Company, testified (vol. 20, pp. 145–6) that that company's method of making prices is by taking the prevailing Baltimore market price as a base and adding the freight to the point of delivery, except in those cases where the company has a regular local agent to whom oil is shipped in carload lots and distributed by him, in which case the local conditions necessarily govern the prices. Later he explained (p. 183) that where the Standard Oil Company had in a given town a price lower than the Baltimore price plus the freight the Red "C's" agent would have to meet the Standard's price. He also said, on cross-examination by defendants' counsel, that he could recall no instance where in selling single carloads in the absence of a permanent local agency his price had been lower than the Baltimore price plus freight. (p. 184.)

Of course, in view of the Standard's practice of discriminating greatly in prices according to the degree of competition, it naturally happens that the Red "C" Company, in pursuing its policy of charging the Baltimore price plus freight, sometimes finds itself selling at less than the Standard's local price. So far from being a criticism of the policy of the Red "C" Company, this situation is an indication of the unfair advantage which the Standard Oil Company takes of the absence of competition in maintaining excessively high prices, and of its discrimination as between one place and another.

Another point should be borne in mind in considering the alleged cuts by the Red "C" Company, namely, that its sales, except in Baltimore, are mostly made in barrels, and that barrel delivery is less acceptable to storekeepers than tank-wagon delivery. Among other witnesses for the Standard who admitted that storekeepers preferred to have tank-wagon oil unless they could get a somewhat lower price were Mr. Parran (vol. 13, p. 1160), Mr. Blackwelder (vol. 13, p. 1371), and Mr. Collings (vol. 12, p. 967). Collings says the difference would not be as much as a cent, but would be half a cent. It appears, therefore, that the normal difference in price between barreled oil and tank-wagon oil is about one-half cent per gallon. Aside from other disadvantages in barrel delivery there is a considerable amount of leakage which the storekeeper must suffer and which directly increases the cost of the oil to him. This is indicated, for example, in the correspondence of the Standard officials regarding Red "C" competition which we have already set forth, particlarly in Petitioner's Exhibits 679 and 687. In Petitioner's Exhibit 690 also, Reed, special agent of the Standard at Atlanta, writing to Collings, compares the prices of the Red "C's" oil and the Standard's oil at Pelzer, S. C., and refers to loss by leakage and expense of drayage to and from the depot in connection with the differences.

Without entering into the testimony in detail, we will mention in the briefest possible manner the principal individual instances of so-called cuts by the Red "C" Company and the explanations thereof given by the Government's witnesses on rebuttal.

Baltimore, Md.—Bruce Robinson testifies that in July, 1905, the Red "C" Company cut the price on gasoline one-half cent a gallon to the Motor Car Company at Baltimore and secured their trade. (Vol. 13, p. 1112.) This is the only instance in which the Red "C" Company is alleged to have cut prices in Baltimore proper. Fehsenfeld says (vol. 20, p. 149) that the Red "C" had sold the Motor Car Company for several years before that and always at the prevailing market price and that he did not cut the price to this concern.

C. & W. Railroad.—Eitel said (vol. 13, p. 1322) that the Standard had a contract and supplied this company with oil in 1906 and part of 1907, and when he called to renew the contract the superintendent informed him that the contract had been given to the Red "C" because of a heavy cut in the price. Metzel said on rebuttal (vol. 20, p. 215) that the Red "C" Company had the business of this company prior to the Standard's contract, that to get it the Standard had cut the Red "C's" former price, and he got back the business by merely matching the Standard's price.

Seaford, Del.—Alleged cut of one-half cent by the Red "C" Company. (Purse, vol. 13, pp. 1279–1282.) Metzel testified that the prices made by the Red "C" Company in and around Seaford were the Baltimore prices with the freight added; that he did not know whether this brought the price below the Standard's or not. (Vol. 20, p. 212.)

Federalsburg, Md.—R. L. Purse testified (vol. 13, pp. 1305–7) that in October, 1905, the Red "C" Company was shipping carload lots of oil to Seaford, Del., and transporting some of it in barrels from there by wagon to Federalsburg, Md., where it sold it at 2 cents under the Standard's price. He testified further, however, that the Standard's price at Seaford was 8 cents, and at Federalsburg 11 cents, a gallon. This situation is simply an evidence of the extraordinary discrimination made by the Standard between neighboring towns, depending upon the presence or absence of competition. Federalsburg is only 8 miles from Seaford. The Red "C" Company simply applied its Seaford price at Federalsburg, adding 1 cent a gallon for the additional cost of delivery.

Perryville, Md.—Parran testified that the Red "C" Oil Company sold gasoline in barrels, at Perryville, Md., in July, 1907, at 13½ cents when the Standard's price in tank wagons was 14 cents. (Vol. 13, pp. 1157, 63.) This would be only a natural difference between barrel and tank-wagon price, but as a matter of fact Metzel testifies that this oil was sold at the price of 13½ cents at Havre de Grace, Md., plus one-half cent for delivery at Perryville across the Susquehanna River, so that there was no cut. (Vol. 20, pp. 208, 9.)

Easton, Md.—The alleged cut testified to by Parran was not a cut at all, the net price charged by the Red "C," as appears from Parran's own statement, being a little higher than the Standard was charging. (Vol. 13, p. 1158, 1167.)

Galena, Md.—This situation is the same as at Easton, Md.; there was no cut. (Parran, vol. 13, p. 1158.)

Cambridge, Md.—Parran referred to the fact that the Red "C" Company, though charging the same price as the Standard, allowed 1 per cent discount for cash, as being a cut. This is too ridiculous to deserve consideration, especially as the Red "C" was selling in barrels and the Standard in tank wagons. (Vol. 13, pp. 1159, 60.) The Red "C" Company was simply following a very common commercial custom.

Raspburg, Md.—Alleged cut of half a cent a gallon. Raspburg is a suburb of Baltimore, and the Red "C" simply sold from its tank wagon there at the Baltimore price. Fehsenfeld testified that the Standard sometimes charged higher prices from its tank wagons in the suburbs than at Baltimore, particularly beyond the point reached by the Red "C" Company's wagons, and that sometimes on the solicitation of a merchant just beyond the usual route of the wagons the Red "C" would make a delivery at the Baltimore price. (Robinson, vol. 13, p. 1112; Fehsenfeld, vol. 20, p. 149.)

Solley, Md.—Alleged cut by the Red "C" Company of 1½ cents per gallon. (Robinson, vol. 13, p. 1113.) The situation here is the same as at Raspburg. (Vol. 20, p. 150.) The same is true of an alleged cut made to a merchant on the Annapolis road leading out of Baltimore, and of another alleged cut of half a cent at Pikesville, Md. (Robinson, vol. 13, pp. 1113–14; Fehsenfeld, vol. 20, p. 150.)

With regard to the situation in the Baltimore suburbs generally, Fehsenfeld testified (vol. 20, p. 155) that for a long time the Red "C" sold from tank wagons only in Baltimore city proper; that he found that the Standard was charging a considerably higher price in the suburbs of Baltimore, and desired to get the advantage of this higher price, so that he extended his tank-wagon delivery system into the suburbs and charged a higher price than in Baltimore; that wherever his wagons went the Standard dropped the price to the city price, and that the conditions of the trade made it necessary that the Red "C" Company uniformly charge the same price at all points reached by its tank wagons from Baltimore city.

Kensington, Md.—E. L. Lillard testified that the Red "C" sold a certain merchant at Kensington at 10½ cents per gallon in barrels, equivalent to a net price of 8 cents, when the Standard's tank-wagon price was 9 cents. (Vol. 13, p. 1378.) This is squarely contradicted by Metzel, who says that this merchant always bought the Red C's high-grade oil and paid 13 to 14 cents, in barrels. (Vol. 20, p. 221.)

Wheaton, Md.—Alleged cut to Cissel similar to cut at Kensington, with the addition that Red "C" paid Cissel 10 cents a barrel (¼ cent per gallon) for hauling. (Vol. 13, p. 1379). Metzel, who made the sales for the Red "C" to Cissel, testified on rebuttal (vol. 20, pp. 221–2) that Cissel always bought Sunbeam oil, a cheaper grade; that the prices were always the Baltimore price at the time with the freight added; and that the one instance in which he made hauling allowance was to match a similar allowance made by a salesman for the bogus Dixie Oil Works on a previous sale by which the Dixie had taken Cissel's trade away from the Red "C".

Germantown, Md.—The alleged cut in price (Lillard, vol. 13, p. 1378) was simply the Baltimore price with the freight added. (Metzel, vol. 20, p. 222.)

Silver Springs, Md.—George E. Parsells, in charge of the Standard's refined-oil department at Washington and vicinity, testified (vol. 13, p. 1186) that the Red "C" Company sold oil to Mr. Hewitt of Silver Springs in barrels at one-ha cent below the Standard's price, allowing for the deduction for the empty barrels. Frank L. Hewitt, of Silver Springs

was also called by the defendants, and testified (vol. 13, p. 1330) that in 1903 he was in the grocery business at Silver Springs and bought oil from the Red "C" Oil Company at prices below those of the Standard; that he remembered at one time paying the Red "C" 9½ cents for oil in barrels, and found that the Standard's price at Norbeck, Md., near by was 10½ cents for oil from tank wagons. He further said, on direct examination, that the allowance for return barrels brought the Red "C" Company's price down to 7½ cents net at Silver Springs, which would be 3 cents below the price at Norbeck. He did not give the Standard's price at Silver Springs at the time. He said that Metzel, the salesman of the Red "C," offered to sell him oil at one-half cent less than anyone else would offer it, and at one-half cent less than he sold to other people in the county. It appears that Hewett afterwards became an agent of the Dixie Oil Works, a bogus independent concern of the Standard.

Metzel testified on rebuttal that there was a wide variation in the Standard's prices in the vicinity of Washington; that Silver Springs is reached by tank-wagon delivery of the Standard from Washington; that Norbeck, the place where a price was mentioned by Mr. Hewitt, was supplied from the Standard's Rockville station; that the price at Rockville was usually 2 or 3 cents higher than at Washington; that the Red "C" sold to Hewitt at the prevailing Baltimore price of the Standard Oil Company with the freight added, but at times sold a little lower in order to meet the competition of the Standard's tank wagon from Washington. (Vol. 20, pp. 220–221.)

Sligo, Md.—Cut of one-half cent under Standard's tank-wagon price, to two merchants. (Parsells, vol. 13, p. 1186.) Metzel says that the same explanation applies here that was given in the case of Hewitt of Silver Springs. (Vol. 20, p. 210.)

Staunton, Va.—Alleged cut of ¾ of a cent per gallon under the Standard's tank-wagon price of 10¼ cents, in 1907. (Duling, vol. 13, p. 1315.) Metzel testified that this price at Staunton was the Baltimore price with the freight added and that it was the same price which the Standard was charging at Harrisonburg, Va., 26 miles away, the freight from Baltimore to Staunton being the same as to Harrison-

burg. The Red "C" Company thus not only used its Baltimore price as a basis, but was simply equalizing the prices at Staunton and at Harrisonburg, which ought to be the same. (Vol. 20, p. 212.)

Millboro, Va.—Alleged cut of one-half cent per gallon in 1907. (Duling, vol. 13, pp. 1315–16.) This sale was made f. o. b. Staunton at the Standard Oil Company's prevailing Staunton price. (Metzel, vol. 20, p. 214.)

Craigsville, Va.—Duling testified that the Red "C" Company sold oil to be shipped to Craigsville at 11½ cents f. o. b. Staunton, when the Standard's price was 12 cents. (Vol. 13, p. 1315.) Metzel testified that the Red "C" had several times sold the concern at Craigsville at 12 cents f. o. b. Staunton, that being the Standard's price; that the next time he went to the customer he found that Duling had sold him at a cut of three-quarters of a cent; that the Red "C" Company matched this price, and that the Standard then through a subsidiary company, the Staunton Safety Oil Company, cut the price another quarter of a cent, and the Red "C" did not meet it. This is a complete contradiction of Duling's testimony. (Vol. 20, p. 214.)

Lexington, Va.—Alleged cut on paraffin oil 1 cent below the Standard's price, besides freight from Staunton. (Duling, vol. 13, p. 1316.) This was the Baltimore price with the carload freight added, the shipment having been made in a carload. (Metzel, vol. 20, p. 214.)

Somerset, Va.—Alleged cut of three-quarters of a cent per gallon. (Eitel, vol. 13, p. 1322.) This was the Baltimore price with the freight added. (Metzel, vol. 20, p. 216.)

Harrisonburg, Va.—Eitel testified (vol. 13, p. 1324) that the Red "C" Company sold 86-degree gasoline, delivered at Harrisonburg, for 22½ cents, when the Standard's price f. o. b. Baltimore was 22 cents, this being equivalent to a cut of 2½ cents, considering the freight. Metzel testified that the regular Baltimore price at that time was 21 cents, the freight 1 cent a gallon, and the expenses of delivering at Harrisonburg half a cent, making the price 22½ cents that was charged. (Vol. 20, p. 216.)

Broadway, Va.—Eitel testified to two sales made by the Red "C" Company at a cut price, not indicating the amount of the cut. (Vol. 13, pp. 1324, 1325.) Metzel testified (vol. 20,

p. 217) that he had called on one of the merchants mentioned by Eitel, who showed him a bill for oil bought from the Standard at Winchester, Va.; that this merchant told him that Eitel claimed that if he was allowed to use the Winchester price of the Standard as a basis, instead of the Harrisonburg price, he could do better. Metzel simply met the Winchester price, plus the freight. This illustrates again the Standard's method of discriminating in prices. If delivery is made from one station it may be at an entirely different price from the delivery made from another station. Metzel says that the Standard's price at Winchester was as much as 1½ cents per gallon lower than the Standard's price at Harrisonburg, although there is only a quarter of a cent difference in the cost of transportation. The same explanation applies to the other sale referred to by Eitel.

Luray, Va.—Alleged cut on gasoline. (Eitel, vol. 13, p. 1326.) The Red "C" sold at the Baltimore price with carload freight added, the deliveries being made in carloads. (Metzel, vol. 20, p. 218.)

Bassetts, Va.—Alleged cut on benzine by the Red "C" Company. (Barrett, vol. 13, p. 1393.) This sale was made at the Baltimore price with the freight added. The Red "C" Company paid the return freight on the empty drums (that being its regular practice where drums are used instead of barrels), in order to put the purchaser on an equal footing with tank-wagon delivery. (Fehsenfeld, vol. 20, p. 156.)

Lincolnton, N. C.—Alleged cut by the Red "C" Company in 1903, amount and date not specified. (Johnson, vol. 13, p. 1452.) The only shipments which the Red "C" Company made to Lincolnton in 1903 were at the Baltimore price with freight added. (Fehsenfeld, vol. 20, pp. 163, 168.)

Hickory, N. C.—Alleged cuts on gasoline or benzine in 1904 and 1907. (Johnson, vol. 13, p. 1452.) All these sales were made at the Baltimore market price with freight added. (Fehsenfeld, vol. 20, p. 166.)

Mooresville, N. C.—Alleged cut by the Red "C" on benzine, date not given and amount not clearly specified. (Blackwelder, vol. 13, pp. 1364–5.) The Government could not reply to this on account of its indefiniteness.

Another alleged cut made four or five years ago, amount not given, was testified to by Johnson (vol. 13, p. 145[illegible]).

Fehsenfeld says that the only shipment he could find made about that time to Mooresville was one on February 17, 1905, at the Baltimore price with the freight added. (Vol. 20, p. 165.)

Monroe, N. C.—Alleged cut to the Piedmont Buggy Company of 2½ cents per gallon, date not specified. (Johnson, vol. 13, p. 1453.) Fehsenfeld says the only sales he made to this concern in 1907 were at the Richmond price with the freight added, the shipments being made from Richmond because it was more practicable to ship gasoline to Monroe from that point than from Baltimore. One of these sales was at the price which Johnson had mentioned as made by the Red "C," and is presumably the one to which he referred. (Vol. 20, pp. 165–6.)

Newton, N. C.—Alleged cut by the Red "C" Company in December, 1904. (Johnson, vol. 13, p. 1453.) Fehsenfeld finds no record of any shipment to Newton in December or within a few months thereof, and he testifies that his records of shipments are complete. (Vol. 20, p. 167.)

Charlotte, N. C.—Blackwelder testified that the Red "C" Company sold a carload of oil in January, 1904, at 11½ cents net when the Standard's price was 12 cents, and another carload for which he thinks the net price was 10.6 cents per gallon, or something like that, while the Standard's price was 11 cents. (Vol. 13, pp. 1362–3.) Fehsenfeld says that when a carload shipment is made in barrels the merchant must haul the oil from the depot to the store, pump the contents into his storage tank, and haul the empty barrel back to the station. He estimates that this costs the merchant about 25 cents a barrel or half a cent per gallon, whereas in tank-wagon delivery to the stores there is no such cost. He says the sale of January, 1904, referred to by Blackwelder, was at the price of 11½ cents net, but would be equivalent to 12 cents delivered at the stores on this basis of reckoning, and would thus be equal to the Standard's price. This is a perfectly obvious and correct explanation and conforms to the admissions of the Standard's witnesses that tank-wagon delivery is preferred by merchants. (Vol. 20, p. 157.) The same explanation would apply to the alleged cut made in January, 1905. (Blackwelder, vol. 13, p. 1363.)

Randleman, N. C.—Jones testified that in 1906 the Red "C" sold a carload of oil at 12½ cents in barrels, making a

net price of 10½ cents, while the Standard's tank-wagon price was 11 cents. (Vol. 13, p. 1438.) Fehsenfeld says that the only shipment of which he has a record at that time was one of January 22, 1906, in which the price delivered was 13 cents, instead of 12½ as stated by Jones, and that this was the Baltimore price with the freight added. (Vol. 20, p. 160.)

Madison, N. C.—Alleged cut by the Red "C" of about one-half cent per gallon. (Jones, vol. 13, p. 1439.) Fehsenfeld says that the price at which he sold was lower than Jones testified to, but that it was the Baltimore price with the freight added. (Vol. 20, p. 161.)

As to another alleged cut at this town made to McGee & Co. (Jones, vol. 13, p. 1439), Fehsenfeld says that his records show no sale to this concern, and that his records are complete. (Vol. 20, p. 161.)

Thomasville, N. C.—Alleged cut of one-half cent per gallon on gasoline. (Jones, vol. 13, p. 1439.) Fehsenfeld says that the price which he made was the same as the Standard's price at High Point, N. C., 7 miles distant, and that the carload was never shipped because the orders were countermanded. (Vol. 20, p. 161.)

Elkin, N. C.—Alleged cut of three-quarters of a cent per gallon. (Jones, vol. 13, p. 1439.) This was the Baltimore price with the freight added. (Fehsenfeld, vol. 20, p. 162.)

North Wilkesboro, N. C.—Alleged cut of 1 cent per gallon. (Jones, vol. 13, p. 1439.) Fehsenfeld says that the price at which he sold was one-half cent higher than claimed by Jones, and that it was the Baltimore price with the freight added. (Vol. 20, p. 162.)

Yorkville, S. C.—Wilmer said (vol. 13, p. 1244), without giving the prices, that when the Red "C" entered Yorkville it made a cut of one-half cent under the Standard's tank-wagon price. We have heretofore shown how unreliable Wilmer's testimony is. Fehsenfeld said on rebuttal (vol. 20, pp. 152–3), giving the exact figures, that the Red "C" sold its first carload at the Baltimore price with the freight added, which netting the merchants one-quarter cent per gallon above the Standard's tank-wagon price. Fehsenfeld further said that while this first car load was enroute, or shortly after it arrived, the Standard reduced its price one cent;

that on its next shipment the Red "C" met the Standard's prevailing price at Yorkville, whereupon the Standard reduced its price another cent, but the Red "C" did not meet this cut, and has done no further business at Yorkville.

Chester, S. C.—Alleged cut to Wylie & Co. in December, 1903, no details stated. (Johnson, vol. 13, p. 1452.) Johnson was a refined-oil salesman and was evidently testifying regarding refined oil. Fehsenfeld says he never sold anything but lubricating oil to Wylie & Co., and these sales were not within several months of the time mentioned by Johnson. (Vol. 20, p. 163.)

Whitmire, S. C.—Alleged cut in 1903 to Charles Titmarch. (Johnson, vol. 13, p. 1452.) Fehsenfeld says that no sale was made to this man in 1902 or 1903. (Vol. 20, p. 164.)

Gaffney, S. C.—Alleged cut in January, 1904. (Johnson, vol. 13, p. 1452.) This was the Baltimore market price with freight added. (Fehsenfeld, vol. 20, p. 164.)

Fort Mill, S. C.—Alleged cut on gasoline in October, 1905. The witness thinks the amount of the cut was about 2½ cents per gallon, but could state nothing positively, and on cross-examination showed confusion. (Blackwelder, vol. 13, pp. 1364, 1373–4.) Fehsenfeld says the Red "C" Company made no sale in Fort Mill during 1905 or 1906. (Vol. 20, p. 158.)

Camden, S. C.—Alleged cut of one-half cent per gallon in December, 1905, or January, 1906. (Barksdale, vol. 13, p. 1426.) Fehsenfeld says that the price he sold at was half a cent lower than Barksdale claims, but that it was the Baltimore price with the freight added. (Vol. 20, p. 158.)

Marion, S. C.—Alleged cut of one-half cent per gallon on kerosene and of about 1½ cents per gallon on gasoline; dates not given. (Barksdale, vol. 13, p. 1427.) Fehsenfeld could not reply to this testimony because of its indefiniteness. (Vol. 20, p. 159–160.)

Bennettsville, S. C.—Alleged cut by the Red "C" Company the evidence as to which is so indefinite that it could not be answered. (Vol. 13, pp. 1445, 1449.)

It should be stated that in all the cases in which Mr. Fehsenfeld testified as to the prices which he made in these various towns he had copies of the invoices in his hand at the time, which were offered to the inspection of defendants' counsel (see vol. 20, p. 160); and that he has complete rec-

ords of the business of the company. In most cases also he stated specifically what the price was at Baltimore at the time and how much the freight charges were. His evidence is perfectly clear and specific, whereas much of the testimony of the defendants' witnesses regarding these alleged cuts was very indefinite, and they produced no records and usually testified wholly from recollection. It will be seen that the great majority of the "cuts" resulted from the perfectly proper and natural practice of charging the Baltimore price with the freight added, and that where this has resulted in a price lower than the Standard's price it was due to the policy of the Standard in discriminating in price between highly competitive points like Baltimore and small towns where independents are able to make sales only occasionally.

PRICE SITUATION AT WASHINGTON AND VICINITY.

The Columbia Oil Company is affiliated with the Red "C" Oil Company. Wm. Fehsenfeld is president of both companies, and W. J. Metzel is a salesman for both. The Columbia Oil Company has a station at Rosslyn, Va., just across the Potomac River from Washington, and markets from tank wagons in Washington and suburban towns.

Lillard, a tank-wagon driver of the Standard, testified (vol. 13, p. 1379) regarding an alleged price cut made by the Columbia Oil Company at Rockville, Md., where it sold for 1 cent less than the Standard. Metzel testified (vol. 20, p. 222) that the Columbia wagon made only one trip from Washington to Rockville; that it sold there at the Washington price, and that the Standard's price at Rockville was 1 or 1½ cents above its Washington price, although the two places are only a few miles apart. Other witnesses for the Standard testified to precisely similar cuts made by the Columbia Oil Company at various places in the vicinity of Washington, including Arlington, Alexandria, Ballston, Clarendon, Cherrydale, Falls Church, and Falls Hill, Va.; and Bethesda, Forest Glen, Triangle, and Linden, Md. (See testimony of Lillard, vol. 13, p. 1379; Sparks, vol. 13, p. 1179; Lyles, vol. 13, pp.1200–2; Parsells, vol. 13, pp. 1187–89.)

Fehsenfeld (vol. 20, pp. 154–5) and Metzel (vol. 20, pp. 209, 222) testified that the Columbia Oil Company marketed in the Washington suburban towns, which could be reached by its tank wagons, at the same prices as at Washington;

that it often found the Standard's prices in these suburban towns higher than the Standard's Washington prices. These alleged cuts, therefore, are nothing more than the result of the Standard's policy of discriminating in price between neighboring towns. We have already referred to Fehsenfeld's testimony regarding the same situation in the vicinity of Baltimore.

Mr. W. S. Barker, a merchant at Washington, testified (vol. 15, pp. 2397–99) that in 1901 the Independent Oil Company began business in Washington and offered him a price one-half cent per gallon less than the Standard's price. He produced certain tank-wagon tickets showing purchases by him from the Standard and the Independent Oil Company in 1901 (Defendants' Exhibits 207–A to 207–D) as showing this cut in price. The Government introduced in connection with the cross-examination of this witness tank-wagon tickets of the Standard showing sales to Mr. Offutt, a grocer at Washington, during this same period. (Petitioner's Exhibits 936 A–H.) All the prices from both sets of tickets combined, with the dates, are as follows. We have indicated which prices are from the defendants' exhibits by a letter "D;" the others are from petitioner's exhibits.

Date.	Prices for refined oil.	
	Standard.	Independent.
	Cents.	*Cents.*
March 11, 1901	7.0	.....
March 15, 1901	7.0	.....
March 18, 1901 D	7.0	.....
March 19, 1901	7.0	.....
March 28, 1901	6.5	.....
March 29, 1901 D	.....	6.5
April 11, 1901	6.5	.....
April 18, 1901	6.5	.....
April 30, 1901 D	.....	6.0
May 9, 1901	6.0	.....
May 16, 1901 D	6.0	.....
July 22, 1901	5.0	.....

The defendants' counsel had sought to compare a sale by the Standard of March 18 with a sale of the Independent on March 29, and the Independent's sale of April 30 with the Standard's sale of May 16, from which it would appear that the Independent Oil Company had cut the price. The full series of tank-wagon tickets above tabulated shows that the Standard had sold at 6½ cents prior to the first sale reported by the Independent at that price. There is a lapse of 12 days between the Standard's sale at 6½ cents on April 18 and the sale by the Independent at 6 cents on April 30. On May 9 the Standard was selling at 6 cents. It is entirely possible that if we had a record of all those twelve days it would show that the Standard reduced the price to 6 cents first. On redirect examination Barker was unable to testify to actual prices, but did say that he received a price which from his knowledge in the trade he knew to be one-half cent below the Standard's price. We submit that what he could learn in the trade and his recollection of events several years ago is of little value in contradiction of the above written evidence made at the time of the actual transactions.

Moreover, Barker's testimony is practically contradicted by the statement of the defendants' own witness Parsells, who had charge of the refined-oil department of the Standard at Washington during this time, who said (vol. 13, p. 1187) "as far as the Independent was concerned they did very little cutting; not any to my knowledge." Surely a man in the position he held at that time would have better trade knowledge than Barker, a merchant, of the fact whether the Independent was cutting prices or not.

The defendants called L. P. Dorsett, an automobile dealer at Washington, who testified (vol. 15, p. 2395) that in 1901 the Independent Oil Company offered him a rebate of one-half cent per gallon. This may be true, but it is not at all surprising that a special price should be given to a customer handling as much gasoline as automobile concerns usually do.

The Independent Oil Company went out of business at Washington in the latter part of 1902 (Barker, vol. 15, p. 2400), and Petitioner's Exhibit 395 shows that the price of oil at Washington went up from 6 cents, in October, 1902, to 9 cents, in January, 1903, the margin changing from a loss of 0.62 cent to a profit of 0.31 cent, which later increased to

2.7 cents. During the period of the competition of the Independent Oil Company the Standard's prices at Washington had been relatively far lower than at points where there was little or no competition in the South Atlantic States. At Washington the Standard sold at a loss nearly all of 1902, while at Richmond, Wilmington, Savannah, and Jacksonville it made profits ranging from 1.5 to over 4 cents per gallon.

A. Gordon, a grocer at Washington, testified (vol. 15, p. 2406) that in 1901 the Independent Oil Company offered him a rebate of one-half cent per gallon from the Standard's market price. He also testified that when the Columbia Oil Company began doing business in Washington, which he thought was about 1903 or 1904, they offered him the same terms as the Independent had done. Fehsenfeld, president of the Columbia Oil Company, said (vol. 20, pp. 153–4) that the Columbia at all times sold at the regular Washington price of the Standard, and he knows of no deviations from it; that he would most likely know if there were any, and that he is consulted about prices that shall be charged at Washington, being president of the company.

Parsells, who had charge of the warehouse of the Standard at Washington at the time in question, testified, without giving dates, that the Columbia Oil Company secured the patronage of J. H. Acton, a peddler of Anacostia, a suburb of Washington, by giving him a price one-half cent below that of the Standard on gasoline. (Vol. 13, p. 1187.) On cross-examination he stated further that he could not give any other case of a cut made by the Columbia in Washington city (vol. 13, p. 1198), but some days later, being recalled by the defendants, he said he did not mean to convey the impression that he knew the Columbia had not cut the Standard's price in any other case; that he was not in a position to know. He also stated that Acton came to the warehouse to order oil on several occasions and stated he was getting a half-cent rebate, and if the Standard would give him the same he would give the Standard the business. (Vol. 16, p. 2608.) This is evidently his only source of knowledge about the Acton transaction, and it is quite possible that Acton intentionally misrepresented the facts in order to get a lower price from the

Standard. Fehsenfeld testified (vol. 20, p. 154) that the price was not cut to Acton.

If the defendants were seeking by this evidence regarding alleged rebates by the Columbia Oil Company to two solitary individuals in Washington to explain the reduction in prices which the Standard made in that city during 1904 to 1906, the explanation is certainly a very faint one. As already stated, after the Independent Oil Company went out of business prices in Washington went up sharply. The Columbia started at Washington in 1904 (Fehsenfeld, vol. 5, p. 2333). Beginning in the latter part of 1904 prices were again cut very sharply. In January, 1904, the Standard's price was 11.5 cents, resulting in a profit of 2.7 cents; in September it had fallen to 8.5 cents, leaving a profit of only 0.18 cent. By September, 1905, it was only 7 cents, and the profit was only 0.13 cent. Throughout the time from September, 1904, to December, 1906, the price never exceeded 8.5 cents and the profit never exceeded 0.9 cent, and was usually much lower. At the same time the Standard was making profits from 1.49 to 3.68 cents per gallon in Wilmington, Savannah, and Jacksonville, and part of the time was making a similar profit at Richmond; while even in Baltimore, where competition is active, the profit was, during most of the time in 1905 and 1906, much higher than at Washington. (See Petitioner's Exhibit 635, vol. 10, p. 1644.)

It is perfectly evident that the Standard maintained low prices in Washington during this period largely because of the competition of the Columbia Oil Company.

DEFENDANT'S TESTIMONY OF PRICE CUTTING BY OTHER INDEPENDENT CONCERNS IN THE BALTIMORE TERRITORY.

We have already considered the testimony introduced by the defendants regarding the alleged price cutting of the Red "C" Oil Company in the Baltimore Division of the Standard Oil Company (which includes the South Atlantic states), and have shown how little foundation there is for the contention that the Red "C" was cutting prices. The defendants also introduced a considerable amount of testimony regarding alleged price cutting by other independent concerns in this same territory, particularly by the Richmond

Oil Company of Richmond, by the National Oil Company, of Norfolk, and in certain sales in western Virginia by independent concerns from western Pennsylvania and Ohio.

Nearly all of these alleged cuts were in small towns where the independent concerns sold in barrels. The Government did not think it necessary to call witnesses to rebut this testimony, having shown clearly by its evidence regarding the Red "C" Oil Company that it is the common practice of independent concerns doing business in barrels to charge the market price at their headquarters plus the freight, with the result that in some towns where the Standard's prices, on account of the absence of competition when the independent entered the town, have been abnormally high, the independents actually do sell at a lower price. Where these conditions exist the policy of the independent concerns is absolutely normal and proper, and constitutes no excuse for the practice of the Standard Oil Company in cutting prices below the cost to independent concerns and particularly in cutting prices where independent concerns establish themselves in tank-wagon business. Moreover, much of the testimony of the defendants regarding these alleged cuts by independent concerns is utterly indefinite, both as to the time and amount of the cuts and also as to the quality of the oil delivered. Furthermore, in a number of instances mentioned by the defendants' witnesses the sales by independent concerns were in barrels, as against the Standard's tank-wagon delivery, and as already stated it appears clearly that barreled oil naturally commands a somewhat lower price than oil from tank wagons.

The only instances in the Baltimore territory of the Standard Oil Company, aside from those already discussed, or discussed in connection with the subject of bogus independent concerns, in which the defendants offered evidence regarding cuts made by concerns handling oil in tank wagons, related to Norfolk and Richmond, Va.

J. B. Brockett, tank-wagon superintendent for the Standard at Norfolk, testified (vol. 13, pp. 1297–1301) that the National Oil Company, which operates tank wagons at Norfolk, had cut prices during 1906, and he named eight cases in which he said a cut was made. In no case did he state the market price at the time or the price at which the sale

as made, nor was there any proof of the quality of the oil r gasoline which was sold by the National. The cuts and oncessions which he testified to are utterly trivial and nconsequential.

R. R. Burnett, a tank-wagon driver of the Standard at Richmond, testified (vol. 13, p. 1450), that certain cut prices were offered by the Richmond Oil Company at points on his route in the suburbs of Richmond—at Cedar Forks, Highland Springs, Fair Oaks, and East Richmond—in February, 1908. There is no evidence as to the relative quality of the oils, but aside from that fact this is doubtless a case similar to those in the vicinity of Washington and the vicinity of Baltimore, already referred to, in which the Standard was charging a higher price in the suburbs than in the city proper, and in which the Richmond Oil Company applied the Richmond price. This witness did not claim that the Richmond Oil Company sold these parties any oil, but merely that it offered a cut price which he had to meet.

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